TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 195.

CARLISLE PACKING COMPANY, PETITIONER,

vs.

OLE SANDANGER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

PETITION FOR CERTIORARI FILED JANUARY 3, 1921.

CERTIORARI AND RETURN FILED JUNE 23, 1921.

(28,029)

(28,029)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 672.

CARLISLE PACKING COMPANY, PETITIONER,

vs.

OLE SANDANGER.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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(Filed in Supreme Court of Washington June 13, 1919. C. S. Reinhart, Clk.)

15407.

No. 127,113.

OLE SANDANGER, Plaintiff-Respondent,

v.

CARLISLE PACKING COMPANY, Defendant-Appellant.

Transcript on Appeal from the Superior Court of the State of Washington in and for the County of King to the Supreme Court of the State of Washington.

1 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Amended Complaint.

Comes now plaintiff and for his amended complaint herein alleges:

I.

That plaintiff is a resident of the County of King, State of Washington.

II.

That defendant is and during all the time hereinafter mentioned was a corporation, duly organized, created and existing under and by virtue of the laws of the State of Washington, with its general offices in the City of Seattle, County of King, State of Washington, and that it at all the times hereinafter mentioned was engaged in the business of manufacturing canned salmon and in the business of operating a salmon cannery at or near Cordova, in the Territory of Alaska, and that the said business of canning salmon at said place was by it carried on by means of machinery and mechanical appliances, and that in and about said business it operated and ran several motor boats and tenders, propelled by machinery, and more par-

ticularly the motor boat and tender hereinafter mentioned and on board which plaintiff was employed and working at the time of receiving the injuries hereinafter set up and mentioned.

III.

That plaintiff was, on or about the 8th day of February,
2 1917, employed by defendant to work for it in and about all work which he should by defendant or any of its officers, managers or foreman be set and ordered to do in and about said defendant's manufacturing business and salmon cannery at Cordova, Alaska, and in and about and on any of its vessels, motor boats or tenders operated for or in connection with said cannery, and that he remained in the employ of the defendant up to the time of receiving the injuries hereinafter mentiond, and at the time of so receiving the same was so in the employ of defendant.

IV.

That there was, on the 30th day of April, 1913, by the Legislature in and for the Territory of Alaska duly enacted a law for said territory and for the adjacent waters of said territory, which law has never been repealed or modified but still is in full force and effect and was in full force and effect during the whole of the year 1917, which said law contained amongst other things the following provisions:

"*a*. That every person, association, or corporation engaged in the business of manufacturing, mining, constructing, building, or other business or occupations carried on by means of machinery or mechanical appliances shall be liable to any of its employees for all damages which may result from the negligence of any of its or his or their officers, agents or employees.

b. That in all such actions brought against a master or employer to recover damages for personal injuries to an employee, the fact that an employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.

c. That all questions of negligence or contributory negligence shall be for the jury."

3 V.

That on the 7th day of March, 1917, plaintiff was by defendant sent on board a certain motor boat or tender, then and there operated by said defendant as a part of its said manufacturing plant, and which said boat or tender was then and there under the command and orders of defendant's foreman, one Iver Stensland, for the purpose of procuring and bringing to said defendant's cannery a load

f sand, to be used for the construction of a certain concrete appli-nce then built at said cannery.

VI.

That some time after dinner on said day it became the duty of laintiff to start a fire in a thin sheet-iron stove maintained by de-endant in the gallery of said motor boat, for the purpose of heating ater with which to wash the dishes which had been used by the ew of said boat for dinner.

VII.

That the wood provided and used for said stove was green and aw, so that it was impossible to start fire in said stove at said time ith the wood then on hand unless, after a certain supply of such ood had been placed in such stove, a small quantity of Kerosene il had been poured on to said wood in said stove and a lighted atch thereupon applied to the portion of said wood saturated with ch kerosene oil.

VIII.

That it was the general custom of the members of the crew of id motor boat, and of other boats of defendant, to light the fire n said stove in such manner and by said means, and in no other ay, and for such purpose it was the general custom of defendant to rnish for such boat a gallon kerosene can filled with such Kerosene il.

IX.

That by reason of the gross carelessness and negligence of defend-ant in keeping side by side of each other in its oil warehouse drums containing gasoline and drums containing kerosene without any of said drums being provided with any dis-nguishing marks or by any distinguishing color, and by reason of he carelessness and negligence of defendant and of its store keeper f said cannery and of its foreman acting as the captain in charge f and in command of said motor boat, said kerosene oil can pro-ded for such purpose was, shortly before the time when plaintiff as to light the fire in said stove for the purpose of heating water r such dishwashing, at the store room of defendant, by its store eeper and by the said Iver Stensland aforementioned, grossly, care-sly and negligently filled with gasoline oil instead of with kerosene il, and by said Iver Stensland carelessly and negligently, when so lled with gasoline oil, brought aboard said motor boat and care-sly and negligently placed in the galley of said boat at the place sually used for such kerosene can, without plaintiff or any of the her members of the crew being in any way informed of such reless and negligent substitution of such gasoline oil for such

kerosene oil, and without plaintiff being, by the exercise of ordinary care on his part, able to discover such substitution of the one oil for the other.

X.

That by reason of such gross careless and negligent substitution of such gasoline oil in said kerosene oil can for kerosene, and not otherwise, when plaintiff, after having placed a few sticks of wood in said stove and after having saturated the same with a proper quantity of what he believed was kerosene oil but, as it proved to be, with such gasoline oil, carelessly and negligently substituted in such can for such kerosene oil, was about to light said fire by applying to said wood on which such oil had been poured a lighted match, a violent explosion of the gases contained in and developed from said gasoline oil occurred, and that then and there and thereby said stove and the said oil can held by plaintiff in his left hand, at what would have been a safe distance from the stove and the fire therein lighted, had the same contained kerosene oil, as it should have, instead of gasoline, with great violence and with a great sheet of flame exploded, and that then and there and thereby plaintiff was enveloped in flames and was severely burnt and suffered terrible burns on both of his hands and forearms and on his left thigh, and also in the whole of his face, most severely on the left side of said face, and that by the forced inhalation of said flames the vital organs of his body were also injured, whereby he received severe and internal injuries all without any fault or negligence on his part.

That defendant further carelessly and negligently and contrary to the provisions of the laws of the Congress of the United States, and contrary to the rules and regulations of the Commerce Department of the United States, failed to provide and have on board of said motor boat any life preservers whatsoever, and that by reason of its failure so to have or provide on board said boat such life preservers, plaintiff, after his clothing had been set on fire, in vain efforts to obtain a life preserver before jumping into the sea to quench and extinguish the flames in his burning clothing, was by the delay thus caused for his jumping into the sea much more severely burned and sustained much more and severe burns, than he otherwise would have sustained, and by reason of the carelessness and negligence and unlawful conduct of said defendant was made to suffer much more aggravated pains and much more aggravated injuries and burns and made to suffer much greater damage than he would have, had such life preservers been provided and kept on said boat in such a manner that he could have availed himself of the same before jumping into the sea.

XI.

That by reason of said injuries so received as aforesaid plaintiff has been made to suffer most excruciating pains of body and mind and has become permanently disfigured and maimed, so as to be

unable to attend to his usual duties and work mainly by reason of the drawn condition of his burnt muscles and skin.

XII.

That plaintiff's permanent injuries so received as aforesaid besides the internal injuries aforementioned and besides a severe nervous shock, evidencing itself during all of the time thereafter and up to the present time, and, as he is informed and believes, liable to continue to so evidence itself for the full term of his natural life, by severe symptoms of nervousness, neuralgic pains, twitching and weakness of his hands, consist of:

1. Brownish pigmentation of the skin of his whole face.

2. Brownish pigmented scars with very tender skin on the whole dorsal surface of both hands, also partly extending out on the back of the fingers.

3. Keloid scars on the tip and on both wings of his nose.

4. Two wing shaped keloid scars taking in the whole border of the lower lip.

5. Extensive and disfiguring keloid scars on the left ear, more pronounced along the anterior border, and also in front of the same. Such keloid scars having a tendency to increase in size and to make his disfigurement more pronounced with the lapse of time.

6. Severe and permanent injuries to his eyes and eyesight.

XIII.

That by reason of all of said injuries plaintiff was for a long time kept under the care of a doctor and in a hospital, but that the expense thereof was borne by the defendant, but that later on, after returning to the state of Washington, plaintiff has for a long time suffered intensely from the internal injuries sustained by him from the inhalation of said flames, necessitating expenses and liabilities incurred by him in efforts to alleviate the sufferings thereby caused him, in and about services of physicians and surgeons, nursing and hospital bills in the sum of One Hundred Seventy five 00/100 Dollars ($175.00) and that he is informed and believes that he by reason of said internal injuries will be further necessarily subjected to like expenditures in the sum of $300 or more, and that he will never be able to fully recover from said injuries or to get rid of said sufferings.

XIV.

That prior to receiving said injuries plaintiff was by trade a fisherman and mariner and able to earn and did earn at the said trade wages at the rate of $100.00 per month and his board.

XV.

That by reason of said injuries he has ever since been prevented from carrying on his said trade and from earning any wages at the same, and that he is informed and believes that such disability for working at his said trade and for earning any wages at the same will, for a long time to come, if not for all time, continue all to his damage in the sum of Two Thousand 00/100 Dollars ($2,000).

XVI.

That besides and beyond the said special damages plaintiff has by reason of the premises been damaged in the sum of Eight Thousand 00/100 Dollars ($8,000.00).

XVII.

That no part of said damages has ever been paid.

Wherefore, plaintiff demands judgment against defendant in the sum of Ten Thousand four hundred and seventy-five 00/100 dollars ($10,475.00) together with the costs and disbursements of this action.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

STATE OF WASHINGTON,
County of King, ss:

Ole Sandanger being first duly sworn on oath says: That he is the plaintiff in the above entitled action; that he has read the foregoing, knows the contents thereof and believes the same to be true Amended Complaint.

OLE SANDANGER.

Subscribed and sworn to before me this 4th day of March,
8 1918.

JNO. W. ARCTANDER,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

Copy of within Amended Complaint received and due service of the same acknowledged this 5 day of March, 1918.

KERR & McCORD,
HADLEY & HADLEY,
Attorneys for Defendant.

Filed in Clerk's Office Mar. 5, 1918.
PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff.

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Answer to Amended Complaint.

Comes now the Carlisle Packing Company, a corporation, the defendant in the above entitled cause, by Hadley & Hadley and Kerr & McCord, its attorneys; and for answer to plaintiff's amended complaint, herein, says:

I.

Answering paragraph IV of said complaint, this defendant says it has not knowledge sufficient to form a belief as to whether the allegations in said paragraph contained are true or not, and it therefore denies the same, and each and every part thereof.

II.

Answering paragraph VII of said complaint, defendant denies the same, and each and every allegation in said paragraph contained, and each and every part thereof.

III.

Answering paragraph VIII of said complaint, defendant denies the allegation that it was the general custom of defendant to furnish such boat with a gallon kerosene can filled with kerosene oil for the purpose of lighting fires; admits that it was the custom of defendant to furnish such boat with a gallon kerosene can filled with kerosene oil for the purpose of supplying the lanterns on board said boat with kerosene oil, and for no other purpose; denies the allegation that it was the general custom of the members of the crew of said boat and of other boats of defendant to light the fire in said stove by the use of kerosene oil; denies the allegation that it was the general custom to light said fires in no other way.

IV.

Answering paragraph IX of said complaint, defendant denies the same and each and every allegation in said paragraph contained, and each and every part thereof.

V.

Answering paragraph X of said complaint, defendant denies that there had been a substitution of gasoline oil in the said kerosene can for kerosene by defendant or its agents, or at all; denies that said wood was saturated with gasoline oil; denies that plaintiff poured gasoline oil upon said wood from said can or otherwise; denies that said can contained gasoline oil or any material other than kerosene; denies that plaintiff poured other than kerosene oil upon said wood; denies that plaintiff applied said match to said wood at what would have been a safe distance from said stove and the fire therein lighted, when kerosene oil was used upon said wood; denies the allegation that defendant failed to provide and have on board said motor boat any life preservers; denies all allegations in said paragraph contained that plaintiff was more severely burned and injured by reason of his alleged efforts to obtain a life preserver before jumping into the sea; denies the allegation that the plaintiff was without any fault or negligence upon his part; and denies all allegations in said paragraph that defendant was careless and negligent. As to all other allegations in said paragraph contained, defendant says it has not sufficient knowledge to form a belief as to whether the same are true or not, and it therefore denies the same and each and every part thereof.

VI.

Answering paragraph XI of said complaint, defendant de-
11 nies that the plaintiff received said alleged injuries as the re-
sult of any negligence on the part of said defendant; and as to all other allegations in said paragraph contained, defendant says it has not knowledge sufficient to form a belief as to whether the same are true or not, and it therefore denies the same.

VII.

Answering paragraph XII of said complaint, defendant says it has not knowledge sufficient to form a belief as to whether the allegations in said paragraph contained are true or not, and it therefore denies the same and each and every allegation in said paragraph contained, and each and every part thereof.

VIII.

Answering paragraph XIII of said complaint, defendant admits that it paid the expense of doctor's fees and hospital care as in said paragraph alleged; but as to all other allegations in said paragraph contained, defendant says it has not knowledge sufficient to form a belief as to whether the same are true or not, and it therefore denies the same and each and every part thereof.

IX.

Answering paragraph XV of said complaint, defendant denies the allegation that the plaintiff was damaged in the sum of two thousand dollars, or in any other sum; and as to all other allegations in said paragraph contained, defendants says it has not knowledge sufficient to form a belief as to whether the same are true or not, and it therefore denies the same and each and every part thereof.

X.

Answering paragraph XVI of said complaint, defendant denies the allegation that plaintiff has been damaged in the sum of eight thousand dollars, or in any other sum whatsoever.

And for a further answer and first affirmative defense, defendant alleges:

I.

That if the plaintiff was damaged by reason of said alleged injuries at or about the time and place mentioned in plaintiff's complaint, any injury or damage sustained by him was the result of his own negligence; that he was, at the time said accident occurred, supplied with dry wood upon said boat which he could easily have split into fine kindling which would have quickly lighted by applying a burning match thereto without the aid of kerosene oil or oil of any kind; that in order to save himself the labor and delay required to split such kindling, he, for his own convenience and wholly from his own choice, negligently attempted to use and did use kerosene oil and poured it upon the unsplit wood so that it might light upon the application of a burning match without the necessity of splitting and preparing the wood in the form of kindling; that he negligently used said kerosene oil in such an abundant quantity that upon the application of the burning match a great flame instantly arose therefrom which flashed so quickly that plaintiff was caught therein and his clothing was burned thereby; that in applying said burning match plaintiff stood so near said saturated wood that he was caught in said flame; that plaintiff well knew the danger of such flash from the lighting of wood saturated in such manner; that he fully understood the situation and knew the danger of standing so near the stove, as he was; that notwithstanding such knowledge on his part he wilfully and negligently stood in close proximity to the stove and the saturated wood when he applied the burning match; that his own negligence, imprudence and want of care, as aforesaid, caused or contributed to his injuries which resulted from and were the proximate cause thereof.

And for a further answer, and second affirmative defense, this defendant alleges:

13 I.

That if the plaintiff was damaged by reason of said alleged injuries at or about the time and place mentioned in plaintiff's complaint any injury or damages sustained by him was the result of his own negligence, that he was, at the time said accident occurred, supplied with dry wood upon said boat, which he could easily have split into fine kindling which would have quickly lighted by applying a burning match thereto without the aid of kerosene oil or oil of any kind; that in order to save himself the labor and delay required to split said kindling, he, for his own convenience and wholly from his own choice, negligently attempted to use and did use kerosene oil and poured it upon the unsplit wood so that it might light upon the application of a burning match without the necessity of splitting and preparing the wood in the form of kindling; that he negligently used said kerosene oil in such an abundant quantity that upon the application of the burning match a great flame instantly arose therefrom which flashed so quickly that plaintiff was caught therein and his clothing was burned thereby; that in applying said burning match, plaintiff stood so near said saturated wood that he was caught in said flame; that plaintiff well knew the danger of such flash from the lighting of wood saturated in such manner; that he fully understood the situation and knew the danger of standing so near the stove, as he was; that notwithstanding such knowledge on his part he wilfully and negligently stood in close proximity to the stove and the saturated wood when he applied the burning match; that plaintiff was at that time an employee and a member of the crew of said boat, being well informed as to all the facts and circumstances above stated; and by reason of the foregoing he then and thereby fully and voluntarily assumed the risk of any danger to him at that time and place.

14 Wherefore, defendant prays for judgment dismissing this cause, and also that it shall have judgment for its costs herein laid out and expended.

HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant

15 STATE OF WASHINGTON,
County of King:

Frank Wright, being first duly sworn, on his oath deposes and says; that he is an officer, to wit; president of the Carlisle Packing Company, a corporation, the defendant in the above entitled action, and makes this affidavit on behalf of said corporation as such officer; that he has read the foregoing answer, knows the contents thereof, and that the statements and allegations therein contained are true, as he verily believes.

FRANK WRIGHT.

Subscribed and sworn to before me this 19th day of March, A. D. 1918.

CLYDE M. HADLEY,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

Service of the within answer to amended complaint is accepted and receipt of copy admitted this 26 day of March, 1918.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

Filed in Clerk's Office Mar. 26, 1918.
PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

16 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Reply.

Comes now the plaintiff, and for his reply to the answer of the defendant to his amended complaint herein alleges:

I.

For reply to the first affirmative defense in said answer set up, plaintiff denies each and every allegation, matter, statement or thing in said first affirmative defense set up, and each and every part, portion and parcel of each and every such allegation, either in the manner or form as in said first affirmative defense of said answer set up, or otherwise.

II.

For his reply to the second affirmative defense in said answer of defendant set up, plaintiff denies each and every allegation, matter, statement or thing in said second affirmative defense of said answer set up, and each and every part, portion and parcel of each and every such allegation either in manner or form as therein set up, or otherwise.

Wherefore, plaintiff having fully replied to said answer and all the matters therein set up, prays judgment as in his complaint herein demanded.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

17 STATE OF WASHINGTON,
County of King, ss:

Ole Sandanger, being first duly sworn on oath says; That he is the plaintiff in the above entitled action; that he has read the foregoing Reply, knows the contents thereof and believes the same to be true.

OLE SANDANGER.

Subscribed and sworn to before me this 27th day of March, 1918.

JNO W. ARCTANDER,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle, Wash.*

Copy of within reply received and due service of the same acknowledged this 27th day of March, 1918.

HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Deft.

Filed in Clerk's Office Mar. 28, 1918.
PERCY F. THOMAS,
Clerk.
By A. N. OLSON,
Deputy.

18 In the Superior Court of the State of Washington — and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Instructions Requested by Defendant.

The defendant in the above entitled cause hereby requests the court to give the following instructions to the jury:

I.

The Court instructs the jury that if you find from the evidence in this case that the plaintiff was injured, then before you can find

gainst the defendant you must find by a preponderance of the testi-ony or evidence that some act or omission of the defendant was he proximate cause of the injury.

II.

You are further instructed that by proximate cause is meant that ct or condition which, in the natural course of events and by e natural chain of causation, unbroken by some extraordinary unusual occurrence, would, according to ordinary human ex-erience, result in the state of affairs which immediately caused e injury.

III.

You are further instructed that in order to find against the de-ndant, its negligence as the proximate cause must be established your satisfaction by a preponderance of the evidence and must merely surmised, speculated or conjectured; that if from the idence you find that the injury might reasonably have been caused by circumstances not due to an act or omission of the defendant, then it will be your duty to find for the defendant.

IV.

You are further instructed that unless you find that the injury uld not reasonably have been caused by any circumstances other an such as might result from the negligence of the defendant will be your duty to find for the defendant; that no legitimate ference can be drawn that an accident happened in a certain way simply showing that it might have happened in that way, and thout further showing that it could not reasonably have happened any other way.

V.

You are further instructed that the evidence must show more than probability of a negligent act on the part of the defendant Com-any; that the cause must not be left to conjecture; that there annot be a recovery where it appears that the injury may have sulted from one of two causes, for one of which the defendant liable, but not for the other.

VI.

You are further instructed that there must be some evidence, ther direct or circumstantial, that there was negligence on the one le, an injury resulting in damages on the other, and that the jury and damages followed the negligence, and were produced ereby; and that it is not proving his case by circumstantial evi-ence for the plaintiff to show that there were causes, for which

the defendant would be liable, which could have produced the injury, without showing that it could not have been produced in any other manner, or in any manner for which the defendant would not be liable.

VII.

You are further instructed that where the testimony leaves the matter uncertain and shows that one of two things may have brought about the injury, for one of which the employer is liable and for one of which he is not, it is not for the jury to guess between these causes and find that the negligence of the employer was the real cause, where there is not satisfactory foundation in the testimony for that conclusion.

VIII.

You are further instructed that to hold the defendant liable, you must find that not only should the circumstances all concur to show that the thing charged happened in a particular way, but that they are inconsistent with any other rational conclusion.

IX.

You are further instructed that negligence is a fact to be proven by evidence, and not to be presumed upon conjecture or speculation.

X.

You are further instructed that verdicts must have evidence to support them, and must not be founded on mere theory or supposition; that in matters of proof, juries are not justified in inferring from mere possibilities the existence of facts.

XI.

You are further instructed that you may infer a result when the facts are established, but that you are not to infer a state of facts when no more than a possibility of such is shown.

XII.

You are further instructed that the fact of accident carries with it no presumption of negligence on the part of the employer, but it is an affirmative fact for the injured employee to establish that the employer has been guilty of negligence; that it is not sufficient for the employee to show that the employer may have been guilty of negligence, the evidence must point to the fact that it was; otherwise it will be your duty to find for the defendant; and you are instructed that no mere sympathy for the unfortune victim of an accident justifies any departure from settled rules of proof resting upon all plaintiffs.

XIII.

You are further instructed that if you find the proximate cause the injury to have been plaintiff's own carelessness and negligence, d that by such carelessness and negligence he contributed to his n injury, and that the injury would not have happened except r his own carelessness and negligence, then in that event you st find for the defendant.

XIV.

t is contended by the plaintiff that the defendant placed in its house at its cannery at Cordova, Alaska, two drums, side by side, containing gasoline and the other containing kerosene and that re was nothing on the outside of either of them to indicate its tents and that gasoline was of a more dangerous and explosive racter than coal oil when the gases developed from it should me in contact with fire and that the can of oil upon the boat at time the injury occurred was taken from one of these drums the oil house and that such can contained gasoline instead of rosene and that it was intended to be gasoline and that because larger drums of oil were undistinguishable that gasoline was ed in the gallon can for use on the boat instead of kerosene.

If you find from the evidence in this case that the larger oil ums in the oil house of the defendant at Cordova consisted only kerosene and that they were properly marked and identified d that the oil in the can upon the boat was taken from these ums, or one of them which was filled with kerosene, then I struct you that the plaintiff cannot recover in this action and your rdict must be for the defendant.

XV.

t is contended by the defendant that the drums of oil in its oil use at Cordova, Alaska were purchased from the Standard Oil Comy, in Seattle, Washington, and that drums were marked with ch ends with the words "Kerosene" or "Pearl Oil" painted thereon; t the drums were purchased from the Standard Oil Company in same containers and in the same condition that they were found Cordova in the oil house of the defendant on or about the 7th of arch, 1918.

If you find from the evidence that the defendant did purchase said ums from the Standard Oil Company upon the representation by e Standard Oil Company that they contained kerosene and not soline, and that such drums were marked so as to indicate kerosene d that there was no other mark or brand or indication from which e defendant, as a reasonably prudent person, could have ascertained at the drums contained other substances than kerosene, and if you rther find that the oil in the can upon the boat at the time of the cident was taken from such oil drums in such oil house of the

defendant upon the belief that it consisted of kerosene, then I in-
struct you that the defendant had a right to rely upon the repre-
sentation of the Standard Oil Company as to the contents of said drum
and if it was represented to be kerosene and the defendant, as a rea-
sonably prudent person, believed that it was kerosene, relying upon
the marks and indications made thereon by the Standard Oil Com-
pany, then I instruct you that the plaintiff cannot recover even
though you should find that the oil drums contained gasoline instead
of kerosene.

A person who buys an article in a sealed package under represent-
tion from a reputable seller as to its contents has a right to rely upon
such representations unless, by the exercise of ordinary prudence, he
could have discovered that the representation was false.

23 XVI.

If you find from the evidence in this case that the explosion from
which it is alleged the plaintiff was injured could reasonably have
been caused, under all the circumstances of this case, from an ex-
plosion of kerosene rather than from an explosion of gasoline, then
I instruct you that the plaintiff cannot recover and your verdict must
be for the defendant.

XVII.

Before the plaintiff can be entitled to recover in this action, you
must be convinced by a fair preponderance of the testimony that the
explosion resulting in the injury to the plaintiff must have been
caused by an explosion of gasoline and not by an explosion of kero-
sene.

XVIII.

I instruct you that the plaintiff cannot recover in this action if
there is a reasonable doubt in your mind from the evidence as to
whether or not the explosion resulted in any other way than from the
gasoline. The plaintiff must not only show by a fair preponderance
of the evidence that the injury resulted from an explosion of gasoline
but the plaintiff is also required to show by a fair preponderance of
the testimony that the injury could not have reasonably resulted in
any other way than by an explosion of gasoline. By the settled law
of this state the burden is upon the plaintiff to prove under the cir-
cumstances that the only possible way that this explosion could have
occurred was through gasoline and not kerosene and the plaintiff
must also prove that the explosion could not have occurred save
through the explosion of gasoline. If the explosion could have been
the result of kerosene or some other substance, the plaintiff is not
entitled to recover in this action and your verdict must be for the
defendant.

XIX.

Simply because the evidence of the plaintiff may tend to establish that the explosion might have resulted from the use of gasoline will not be sufficient to justify a recovery on the part of the plaintiff. It is not sufficient for the plaintiff to establish the fact that it might have occurred from a gasoline explosion, the burden is upon him to show that it did result from a gasoline explosion and that it could not reasonably have been due to an explosion of any other substance.

XX.

If you find from the evidence in this case that kerosene when heated or when poured upon heated or hot coals, sand or gravel will generate a vapor and that such vapor when so generated will explode if ignited by a flame of a match, and if you find from the evidence in this case that a vapor could have been generated from the use of kerosene ignited, then I instruct you that the plaintiff cannot recover and your verdict must be for the defendant.

XXI.

If you find from the evidence in this case that Ivar N. Stensland, at the time of the injury to the plaintiff on the 7th of March, 1918, was the master of the vessel upon which he was injured, and that the said Stensland filled the gallon can on the morning of the injury with gasoline instead of kerosene, and that the defendant had in its oil house at its cannery at Cordova a drum of kerosene and a drum of gasoline, side by side, and that Stensland by the exercise of ordinary prudence or by the exercise of the ordinary tests of smelling or by touring the same in his hands, could have determined before he placed the oil in the gallon can whether it was gasoline or whether it was kerosene and failed to do so, and by mistake placed in the gallon can gasoline instead of kerosene, and subsequently placed the said gallon can in the cabin of the vessel, and that the substitution of gasoline instead of kerosene in the gallon can was due to the negligence of said Stensland, and that the defendant company had no person knowledge of the mistake or negligence of the said Stensland, then I instruct you that your verdict must be for the plaintiff, but in a sum not in excess of One Hundred Seventy five ($175) Dollars.

XXII.

The injury claimed to have been sustained by the plaintiff occurred upon a vessel plying in the waters of Alaska. The injury sustained by him is defined to be a maritime wrong or tort because the injury that he sustained occurred upon a vessel upon navigable waters. For such maritime injury the plaintiff is only entitled to recover his wages for the period of his employment and his hospital and doctor

bills and expenses of his cure. He is not entitled to recover for lo
time or for permanent injuries or for pain or suffering or for in
ability to work or for present or future pain or suffering or for temp
rary or permanent injuries. He is only entitled under the maritim
law, which must be enforced in this case, for his wages, hospital an
doctor bills and the expense of his cure. The plaintiff has n
claimed any sum in excess of One Hunded seventy-five Dollars for hi
wages, hospital, doctor bills and expense of cure and I instruct yo
that in this case he is to be limited by you to the sum not in exce
of One Hundred Seventy-five Dollars and if you find a verdict fo
the plaintiff it must not be in excess of One hundred seventy-fiv
dollars.

XXIV.

The Congress of the United States has enacted a law providing th
ship owners shall not be liable for any debts, obligations or liabiliti
arising on board a ship beyond the value of the ship and the freigh
money for the current voyage during which the debt of liability aros
You will first determine the value of the vessel of the defend
26 ant upon which the plaintiff was injured and the freigh
money, if any, that the vessel earned on the voyage upo
which plaintiff was injured and under no circumstances can you
verdict be for a sum in excess of such value of said vessel and freigh
money for said voyage.

(This instruction is requested in the alternative that the court r
fuses to limit the amount of the recovery of the plaintiff to the sum
of $175.00.)

XXV.

I instruct you that the plaintiff is entitled to recover in this ca
in the sum of One Hundred Seventy five Dollars and you will pr
pare a verdict in favor of the plaintiff and against the defendant fo
the sum of One hundred seventy five dollars and no more.

XXVI.

The seaworthiness of a vessel is defined to be in maritime law, th
sufficiency of the vessel in materials, construction, equipment, o
fficers, men and outfit for the trade or service in which it is employe
and if you find from the evidence in this case that the vessel of th
defendant at the time she started upon the voyage upon which th
plaintiff was injured was in a seaworthy condition as measured by
the foregoing definition, then I instruct you that the plaintiff
limited in his recovery to not in excess of One hundred seventy-fiv
dollars. The test of seaworthiness is whether the vessel is reasona
ably fit to perform the service undertaken by the master and if yo
find from the evidence in this case that the vessel upon which th
plaintiff was injured was reasonably fit for the service intended
the commencement of the voyage, or that the defendant exercis

e diligence in attempting to make her seaworthy for said voyage, hen I instruct you that the plaintiff cannot recover in excess of One undred seventy-five dollars and your verdict must be in an amount t in excess of said sum.

XXVII.

If you find from the evidence in this case that a fire in the cook- stove just preceding the injury could have been started by the e of waste or by the use of paper or kindling wood, or in any other r other than by the use of kerosene or gasoline, then I instruct you t the plaintiff cannot recover in excess of the sum of One hundred enty-five dollars.

XXIX.

If you find from the evidence in this case that it is hazardous or ngerous or unsafe to attempt to start a fire in a stove upon a vessel, ther by the use of kerosene or by the use of gasoline, and that the intiff at the time he attempted to use either gasoline or kerosene start a fire in the stove on the day of the injury, by the exercise of dinary prudence might have known of the danger that might re- t from the use of kerosene or gasoline, then I instruct you that e plaintiff assumed the risk of the use of either kerosene or gaso- e on the day in question, and he cannot recover in excess of the m of One hundred seventy-five dollars for any injuries he may have sained as the result of the explosion on said vessel and your ver t must be for the plaintiff in a sum not in excess of One hundred enty-five Dollars.

Filed in open court Sep. 11, 1918.
PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

The Court's Instructions.

DIES AND GENTLEMEN OF THE JURY:

This is an action brought by the plaintiff against defendant for recovery of damages laid in the complaint at Ten Thousand Four

Hundred Seventy five ($10,475) Dollars for certain injuries claime
to have been sustained on the 7th day of March, 1917, by plainti
while working for defendant at its cannery near Cordova in Alask
such injuries being as plaintiff claims caused by the negligence
the defendant corporation or of its foreman in charge of a certai
motor boat, Ivar Stensland, or by the negligence of both of them.

A person is said to be guilty of negligence when he either do
something which an ordinarily careful person under the same ci
cumstances would not have done, or when he omits to do somethin
which an ordinarily careful person under the same circumstanc
would have done.

The basis of the action is negligence. The mere happening of a
injury to a person while in the service of another person or corp
ration does not in itself justify a recovery of damages for the injur
suffered. In order to give the servant a right to recover damag
from his master, the master or some one of his servants for wh
conduct he is responsible, must have been guilty of neg
29 gence causing the injuries and the servant injured must n
himself have been guilty of negligence on his part, which d
rectly and materially contributed to his injury.

In this case plaintiff claims that defendant placed and maintain
similarly looking drums, one containing gasoline and the other co
oil, side by side in its oil house at its cannery near Cordova in Alask
and that it negligently failed to indicate on these drums, or in an
manner, the contents of each of said drums, whether gasoline or co
oil, either by different colors on the end of each drum or by placin
words or signs of any kind indicating the contents of the respecti
drums on either one of them, and that defendant's foreman in charg
of the motor boat on which plaintiff was hurt and burned on Marc
7, 1917, either because there was nothing on the drums to show th
different contents of each of them, or because of his own careless ne
filled the can provided for the motor boat for coal oil to be used f
filling the lanterns and starting the fire with in the stove on the bo
with gasoline instead of with such coal-oil, and that he placed th
can, which was marked "coal-oil," but which was, at the time,
fact, filled with gasoline, at the place in the forecastle where the co
oil can usually was kept, and where persons making fire in the sto
would look for the can containing coal-oil and use the contents
such can for starting the fire with.

If the jury believes from all the evidence in the case that the
drums were placed by defendant for the use of its employees side b
side in the oil house, one drum containing gasoline and the other co
taining coal-oil and that there was nothing on the outside of eith
of them to indicate its contents, and that gasoline was of a mo
dangerous and explosive nature and character than coal-o
30 when the gases developed from it should come in contact wi
fire, and that an ordinarily careful employer would not, und
all the circumstances of the case have done this, then and in that ca
the jury would be justified in finding the defendant guilty of neg
gence in this regard, and if by reason of such negligence plaintiff w
burned and injured without himself being guilty of any negligen

ctly and materially contributing to such injuries then and in that
e the jury should find a verdict for plaintiff in such amount as it
ls that he has suffered damages by reason of the injuries he has
ained so caused by such negligence on the part of the defendant.
If on the other hand, the jury believes from the evidence either
defendant did not place the two drums side by side in the oil
se, or if they were so placed that the contents of each was prop-
r designated on the outside of the drums, or if not so designated
an ordinarily careful employer, under the same circumstances,
uld not so designate the contents of the drums, but if the jury at
same time finds that the foreman of defendant in charge of the
t, Ivar Stensland, could before he filled the coal-oil can from the
n have by a simple test found out whether it was coal-oil or gaso-
he filled the can with, and if the jury further finds that he did
before filling the can with gasoline, if you believe that he did in
fill it with gasoline, make any such test or in any manner try to
l out what oil he got, and if the jury further believes that an
inarily careful foreman or man in charge of the boat would not,
der the same circumstances, have filled the can or placed it where
did place it, without first finding out whether it was coal-oil or
oline he filled the can with, then and in that case the jury would
be justified in finding said Stensland guilty of negligence and
if the jury believe that by reason of such negligence on Stens-
land's part plaintiff was, without any negligence on his own
t, injured and burned, then in that event it should find a verdict
plaintiff in such sum as would fairly compensate him for the
mages he sustained by reason of such injury so caused by said
nsland's negligence.

If the jury believes from all the evidence in the case that both
fendant and Stensland were guilty of negligence in the regards
ed, and that such negligence on the part of both of them was the
ximate cause of the injury to plaintiff and that plaintiff was not
lty of any negligence on his part directly and materially con-
uting to the injuries, then the jury should return a verdict for
plaintiff for the damages he has sustained.

If the jury believes from the evidence that there were no life pre-
vers on the boat on this trip and that an ordinarily careful and
dent owner of such motor boat would, under the same circum-
nces not have sent the boat away from the cannery without pro-
ing it with one or more life-preservers, then and in that case the
y would be justified in finding defendant guilty of negligence in
having furnished the boat with one or more life-preservers as the
e might be, and if the jury further believes from the evidence
t such act or omission on the part of defendant was the proximate
se of plaintiff's suffering greater and more extensive and aggra-
ed injuries, than he would have suffered had such life-preservers
en provided, then and in that case the jury should allow plaintiff
verdict for such additional damages as would compensate him for
e greater, more extensive and more aggravated injuries caused by
ason of such failure to provide such life-preservers.

32 If the jury believes from the evidence that there was no negligence on the part of the defendant or Stensland in regard to the filling of the can, but find that defendant was guilty of negligence in not providing life-preservers for the boat, if none were provided, and that by reason of such failure to furnish life-preservers plaintiff's injuries sustained by being exposed to the fire were aggravated and his suffering made greater and more extensive, then it may return a verdict for plaintiff for the damages suffered by such aggravation of his injuries, but not for the injuries he would have suffered as a direct result of the accident had there been life-preservers aboard the boat. In other words, the aggravation of plaintiff's injuries caused by the absence of life preservers, if there was any such aggravation, would be the only damages for which you should award compensation under that state of facts.

On the question of whether the defendant or Stensland or both were guilty of any negligence causing plaintiff's injuries, the burden of proof is on the plaintiff, and before he can recover a verdict at your hands he must have convinced you by a fair preponderance of all the evidence in the case, that either defendant or Stensland or both of them were guilty of negligence in any of the respects charged in the complaint, and that such negligence on the part of either or both of them was the proximate cause of his injuries.

If the plaintiff has failed to establish by a preponderance of the evidence the fact that there was gasoline in the can from which he poured the oil onto the wood in the stove, then your verdict should be for the defendant, unless you should further find that there were no life preservers on board the boat and that the absence of
33 life preservers was the cause of his injuries being aggravated, in which case you should only find damages for the aggravation to his injuries caused by the absence of life preservers.

But when it comes to the question of whether any negligence on the part of the plaintiff himself either caused or materially and directly contributed to his injuries, the burden of proof changes and on this question the defendant must, in order to defeat plaintiff's recovery on the ground of contributory negligence, convince you by a preponderance of all the evidence in the case: First, that plaintiff himself was in fact guilty of such negligence, and, Second, that such negligence on his part either caused or materially and directly contributed to his injury.

On this question as well as on the question of negligence on the part of defendant the unfailing test is:

Does the fair preponderance of the evidence convince you, that he did something which an ordinarily careful and prudent man, under the same circumstances would not have done; or does this same fair preponderance of all the evidence in the case convince you that he failed to do something which such ordinarily careful and prudent man would have done under the same circumstances. If you in your mind answer both of these questions with "no" you cannot find plaintiff guilty of any contributory negligence which would defeat his right to recover in this action. But on the contrary if you answer both of these questions with "yes" then you should find the

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laintiff guilty of contributory negligence and your verdict should
for the defendant.

If you find under the evidence produced and under the instructions given you by the court that plaintiff is entitled to a verdict, then the amount which your verdict should give him becomes important.

If entitled to a verdict at your hands at all, the court instructs that he is entitled to receive full and fair compensation:

1st. For his necessary expenses paid or incurred to physicians and geons and for necessary hospital expenses in efforts to become ed from the injuries sustained by him, not to exceed however der this head the sum of One Hundred Seventy five ($175) llars.

2nd. For all loss he has sustained in and to his earning capacity as sherman and mariner which earning capacity is by the pleadings mitted to be the sum of One Hundred Dollars ($100) per month, compensation for loss under this head, however, not to exceed sum of Two Thousand ($2,000) Dollars including any future to such earning capacity, if you under the evidence find, that re is liable to be any future loss of earning capacity.

3rd. Full and fair compensation for his suffering and for all pains body and mind caused him by the injuries as well as for any and temporary or permanent disfigurement and for any temporary permanent maiming of any members of his body, if you find re was any such, also for any other temporary or permanent inries, which you should find that he has sustained, the damages der this head, however, not to exceed the sum of Eight Thousand 8,000) Dollars.

You will not itemize these different elements of damages. You ll add them up and find them all in a lump sum, which sum, how-er, cannot be more than the amount asked for in the complaint hich is Ten Thousand Four Hundred Seventy five ($10,475) Dol-rs, and you will then insert this lump sum, whatever it is, as the amount of your verdict.

Plaintiff in this case is claiming compensation for alleged future or permanent injuries. The degree of proof for future permanent injuries is greater than that required for past or present juries. As to the latter, plaintiff is only required to prove them by fair preponderance of the evidence but as to future or permanent juries the law requires the proof to be reasonably certain, and you ould not be justified in awarding compensation for any future or rmanent injuries unless the proof is reasonably certain that they ill follow as a result of the accident complained of.

By a "fair preponderance of the evidence" as used in these instructions is meant the greater weight of the credible testimony in the ase. It does not necessarily mean the greater number of witnesses estifying on one side or the other of a disputed proposition of fact, although the number of witnesses so testifying is a proper matter for

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you to take into consideration in determining where the preponderance lies. The preponderance of the evidence means the testimony of such witnesses as when tested by the rule given you for the purpose of determining the credibility of witnesses outweighs or overbalances the testimony on the other side.

You are the sole and exclusive judges of the evidence and of the credibility of the several witnesses and of the weight to be attached to the testimony of each. In weighing the testimony of a witness, you have a right to consider his or her demeanor upon the witness stand, the apparent fairness or lack of fairness, the apparent candor or lack of candor of such witness, the reasonableness or unreasonableness of the story such witness relates, and the interest, if any, you may believe a witness feels in the result of the trial, and any other fact or circumstance arising from the evidence which appeals
36 to your judgment as in anywise affecting the credibility of such witness, and give to the testimony of the several witnesses just such degree of weight as in your judgment it is entitled to.

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except insofar as the same may be corroborated by other credible evidence in the case.

You will take to the jury room the pleadings in the case, consisting of the complaint, answer and reply, the exhibits which have been admitted in evidence, these instructions and two forms of verdict. One form of verdict you will use in case you find for the plaintiff; the other you will use in case you find for the defendant. If you should find for the plaintiff then you will insert in that form of verdict the amount you find the plaintiff is entitled to recover under the evidence and the instructions I have given you and have it signed by your foreman. In case you find for the defendant all that is necessary is to have your foreman sign that form of verdict.

On retiring to the jury room you will select a foreman from among yourselves, whose duty it shall be to sign whatever verdict the jury agrees upon.

Ten or more of your number may agree upon a verdict and whenever ten or more have agreed upon the verdict, you will have it signed by your foreman as the verdict of the jury and return with it into open court.

Filed in Open Court Sep. 11, 1918.
PERCY F. THOMAS,
Clerk,
By F. D. CLEAVES,
Deputy.

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In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Exceptions of Defendant, Carlisle Packing Company, to Instructions Given by Court and to Refusal of Court to Give Certain Requested Instructions Asked by said Defendant.

I.

Defendant excepts to the instructions given by the Court and requested by the plaintiff on page V of plaintiff's instructions for the reason that said instruction is not a correct statement of the law applying to this case.

II.

Defendant excepts to the instruction given by the Court and requested by the plaintiff on page VI of plaintiff's instructions for the reason that said instruction is not a correct statement of the law applying to this case.

III.

Defendant excepts to the instruction given by the Court and requested by the plaintiff on page VIII of plaintiff's instructions, for the reason that said instruction is not a correct statement of the law applying to this case.

IV.

Defendant excepts to the instruction given by the Court and requested by the plaintiff on page IX of plaintiff's instructions, for the reason that said instruction is not a correct statement of the law applying to this case.

V.

Defendant excepts to subdivisions 2 and 3 and also the last paragraph of the instruction given by the Court and requested by the plaintiff on page XIII of plaintiff's instructions for the reason that said instruction is not a correct statement of the law applying to this case.

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VI.

Defendant further excepts to the refusal of the Court to give t
first instruction as requested by the defendant and numbered
for the reason that said instruction is a correct statement of the l
applicable to this case.

VII.

Defendant further excepts to the refusal of the Court to give t
second instruction as requested by the defendant and numbered
for the reason that said instruction is a correct statement of the l
applicable to this case.

VIII.

Defendant further excepts to the refusal of the Court to give t
third instruction as requested by the defendant and numbered II
for the reason that said instruction is a correct statement of the l
applicable to this case.

IX.

Defendant further excepts to the refusal of the Court to give t
fourth instruction as requested by the defendant and numbered I
for the reason that said instruction is a correct statement of the l
applicable to this case.

X

Defendant further excepts to the refusal of the Court to give t
fifth instruction as requested by the defendant and numbered V f
the reason that said instruction is a correct statement of the l
applicable to this case.

XI.

Defendant further excepts to the refusal of the Court to give t
sixth instruction as requested by the defendant and numbered V
for the reason that said instruction is a correct statement of the l
applicable to this case.

39 XII.

Defendant further excepts to the refusal of the Court to give t
seventh instruction as requested by the defendant and numbere
VII, for the reason that said instruction is a correct statement of t
law applicable to this case.

XIII.

Defendant further excepts to the refusal of the Court to give t
eighth instruction as requested by the defendant and numbere

VIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XIV.

Defendant further excepts to the refusal of the Court to give the ninth instruction as requested by the defendant and numbered IX for the reason that said instruction is a correct statement of the law applicable to this case.

XV.

Defendant further excepts to the refusal of the Court to give the tenth instruction as requested by the defendant and numbered X, for the reason that said instruction is a correct statement of the law applicable to this case.

XVI.

Defendant further excepts to the refusal of the Court to give the eleventh instruction as requested by the defendant and numbered XI, for the reason that said instruction is a correct statement of the law applicable to this case.

XVII.

Defendant further excepts to the refusal of the Court to give the twelfth instruction as requested by the defendant, and numbered XII for the reason that said instruction is a correct statement of the law applicable to this case.

XVIII.

Defendant further excepts to the refusal of the Court to give the thirteenth instruction as requested by the defendant and numbered XIII for the reason that said instruction is a correct statement of the law applicable to this case.

XIX.

Defendant further excepts to the refusal of the Court to give the fourteenth instruction as requested by the defendant, and numbered XIV, for the reason that said instruction is a correct statement of the law applicable to this case.

XX.

Defendant further excepts to the refusal of the Court to give the fifteenth instruction as requested by the defendant, and numbered XV, for the reason that said instruction is a correct statement of the law applicable to this case.

XXI.

Defendant further excepts to the refusal of the Court to give the sixteenth instruction as requested by the defendant, and numbered XVI, for the reason that said instruction is a correct statement of the law applicable to this case.

XXII.

Defendant further excepts to the refusal of the Court to give the seventeenth instruction as requested by the defendant, and numbered XVII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXIII.

Defendant further excepts to the refusal of the Court to give the eighteenth instruction as requested by defendant, and numbered XVIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXIV.

Defendant further excepts to the refusal of the Court to give the nineteenth instruction as requested by the defendant, and numbered XIX, for the reason that said instruction is a correct statement of the law applicable to this case.

41 XXV.

Defendant further excepts to the refusal of the Court to give the twentieth instruction as requested by the defendant, and numbered XX, for the reason that said instruction is a correct statement of the law applicable to this case.

XXVI.

Defendant further excepts to the refusal of the Court to give the twenty-first instruction as requested by the defendant, and numbered XXI, for the reason that said instruction is a correct statement of the law applicable to this case.

XXVII.

Defendant further excepts to the refusal of the Court to give the twenty-second instruction as requested by the defendant, and numbered XXII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXVIII.

Defendant further excepts to the refusal of the Court to give the enty-third instruction as requested by the defendant, and numbered XXIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXIX.

Defendant further excepts to the refusal of the Court to give the enty-fourth instruction, as requested by the defendant, and numbered XXIV, for the reason that said instruction is a correct statement of the law applicable to this case.

XXX.

Defendant further excepts to the refusal of the Court to give the enty-fifth instruction as requested by the defendant, and numbered XXV, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXI.

Defendant further excepts to the refusal of the Court to give the twenty-sixth instruction as requested by the defendant and numbered XXVI, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXII.

Defendant further excepts to the refusal of the Court to give the enty-seventh instruction as requested by the defendant, and numbered XXVII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXIII.

Defendant further excepts to the refusal of the Court to give the enty-eighth instruction as requested by the defendant, and numbered XXVIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXIV.

Defendant further excepts to the refusal of the Court to give the enty-ninth instruction as requested by the defendant, and numbered XXIX, for the reason that said instruction is a correct statement of the law applicable to this case.

KERR & McCORD,
HADLEY & HADLEY,
Attorneys for Defendant,
Carlisle Packing Company.

Service of the within — is accepted and receipt of copy admit
this 10 day of January, 1919.

ARCTANDER & LYSONS,
Attorneys for Pl

Filed in Open Court Jan. 10, 1919.
PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

43 In the Superior Court of the State of Washington for
County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

THE CARLISLE PACKING COMPANY, Defendant.

Verdict.

We, the jury in the above entitled cause, do find for the plain
in the sum of — Dollars ($7,175.00).

J. P. THOMPSON,
Foreman

Filed in Open Court Sep. 11, 1918.
PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

44 In the Superior Court of the State of Washington in a
for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Motion for Judgment non Obstante and in the Alternative fo
New Trial.

Comes now the above named defendant by its attorneys K
& McCord and Dorr and Hadley and moves the court for an or
reducing the verdict returned by the jury herein to the sum
One hundred and Seventy-five Dollars ($175) and costs notwi

nding the verdict heretofore returned by the jury, which motion based upon the files on record herein and is made for the reason d based upon the following grounds:

I.

That the amount of said verdict is excessive and appears to have en given under the influence of passion and prejudice.

II.

That the evidence adduced herein at the time of the trial of s action is insufficient to justify a verdict in excess of the said e hundred seventy-five dollars ($175) and that any verdict ren- ed in excess thereof is against the law.

III.

That there was error in law occurring at the trial of this action excepted to at the time by this defendant.

IV.

That there is no evidence whatsoever adduced at the trial of s action which would, according to law, support a verdict in r of the plaintiff and against the defendant in a larger sum n one hundred seventy-five dollars ($175) and costs.

And in the alternative, in the event of the foregoing motion being denied, this defendant moves the court for an r granting it a new trial upon the following grounds and for following reasons:

I.

regularity in the proceedings of the court and jury at the trial this action and abusive discretion by which this defendant was vented from having a new trial.

II.

lisconduct of the plaintiff and jury.

III.

ccident and surprise which ordinary prudence could not have ded against.

IV.

Newly discovered evidence material for this defendant which ould not with reasonable diligence have discovered and produced he trial.

V.

Excessive damages appearing to have been given under the influence of passion and prejudice.

VI.

Insufficiency of the evidence to justify the verdict and that the same is against the law.

VII.

Error in law occurring at the trial excepted to at the time by the defendant.

KERR & McCORD AND
DORR & HADLEY,
Attorneys for Defendant.

Copy of within Mo. for Judgm. N. O. V. received and due service of same acknowledged this 11 day of Sept., 1918.

ARCTANDER & LYONS,
Attorneys for Plf.

Filed in Open Court Sept. 11, 1918.

PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

46 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Order.

Upon hearing the defendant's motion herein for order for judgment for the sum of One hundred seventy five ($175) Dollars and costs only notwithstanding the verdict heretofore returned by the jury herein and the court being fully advised in the premises:

It is hereby ordered that said defendant's motion for judgment notwithstanding the verdict be and the same hereby is in all things denied.

Defendant is granted an exception to this order.
Done in open court this 27th day of January, 1919.

MITCHELL GILLIAM,
Judge.

Filed in clerk's office Jan. 27, 1919.

PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington in and for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Order Denying Motion for New Trial.

This matter came before the court on defendant's motion for a new trial herein;

Now therefore, after hearing the parties and being fully advised in the premises, it is hereby ordered, that said motion be and the same hereby is in all things denied provided plaintiff within ten days from this date make and file his consent herein remitting from the amount of the verdict rendered herein the sum of Three Thousand ($3,000) Dollars.

And upon the filing of such consent of remission of such sum of Three thousand ($3,000) Dollars, it is further ordered that judgment be entered and rendered herein upon said verdict so reduced, to wit, for the sum of Four Thousand One hundred seventy five ($4,175) dollars and interest on said sum at six per cent per annum from and since the date of the return of said verdict, to wit from and since September 10th, 1918, together with the costs and disbursements of this action as taxed, the order heretofore made herein staying the entry of judgment herein being hereby vacated.

It is further ordered, that if plaintiff shall fail to file within thirty days after this date his consent remitting from the amount of the verdict herein the sum of Three thousand ($3,000) Dollars then and in that case the verdict in this action will be set aside and a new trial ordered.

Dated this 1st day of February, 1919.

MITCHELL GILLIAM,
Judge.

Filed in Clerk's Office Feb. 3, 1919.

PERCY F. THOMAS,
Clerk.

By A. N. OLSON,
Deputy.

49 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Consent to Reduction of Verdict.

The court having duly made its order in the above entitled action that the motion of defendant for a new trial herein be denied provided plaintiff shall within ten days from February 1, 1919, make and file his consent in this action remitting of the amount of the verdict in said action, to-wit; Seven thousand One Hundred Seventy five ($7,175) Dollars, the sum of Three Thousand ($3,000) Dollars of said verdict.

Now therefore, be it known that I, the said plaintiff, hereby consent to remit from the amount of said verdict herein the said sum of Three Thousand ($3,000) Dollars and that said verdict be reduced from the sum of Seven Thousand One Hundred seventy five ($7,175) —, so as to stand at and for the sum of Four Thousand One Hundred Seventy five ($4,175) Dollars and no more.

In witness whereof I have hereunto set my hand this 3rd day of February, 1919.

OLE SANDANGER,
Plaintiff.

Filed in Clerk's Office Feb. 3, 1919.

PERCY F. THOMAS,
Clerk.

By A. N. OLSON,
Deputy.

In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Notice of Appeal.

To Ole Sandanger,
Plaintiff in the above-entitled cause, and to
Arctander & Lysons,
His attorneys of record:

You and each of you are hereby notified that the Carlisle Packing Company, a corporation, the defendant above named, hereby appeals to the Supreme Court of the State of Washington from that final judgment in favor of said plaintiff and against said defendant entered in said cause by the Superior Court of King County, Washington, on February 4th, 1919, and from each and every part thereof.
Dated this 6th day of February, 1919.

KERR & McCORD,
HADLEY & HADLEY,
Attorneys for Defendant, Carlisle Packing Company.

Service of the within Notice of Appeal is accepted and receipt of copy admitted this 6th day of February, 1919.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

Filed in Clerk's Office Feb. 6, 1919.
PERCY F. THOMAS, *Clerk.*
By W. T. HATT, *Deputy.*

In the Superior Court of the State of Washington in and for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Supersedeas and Cost Bond on Appeal.

Know all men by these presents: That we, Carlisle Packing Company, the defendant above named, as principal, and the American

Surety Company of New York, a corporation organized under the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto Ole Sandanger, the plaintiff, above named, in the just and full sum of Nine Thousand and no/100 ths. Dollars ($9,000.00), for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of February 1919.

The condition of this obligation is such, that whereas, the above named Ole Sandanger on the 4th day of February, A. D. 1919, in the above entitled action and court, recovered judgment against the Carlisle Packing Company above named for the sum of Four Thousand Three Hundred Twenty five and 10/100 Dollars.

And whereas, the above named principal has heretofore given due and proper notice that they appeal from said decision and judgment of said Superior Court to the Supreme Court of the State of Washington.

Now therefore, if the said principal Carlisle Packing Company shall pay to Ole Sandanger the plaintiff above named, all costs and damages that may be awarded against them on the appeal, or on the dismissal thereof, and shall satisfy and perform the judgment or order appealed from, in case it shall be affirmed, and any judgment or order which the said Supreme Court may render or
52 make, or order to be rendered or made by said Superior Court, then this obligation to be void; otherwise to remain in full force and effect.

Twice the amount of the Judgment and Costs in Trial and $200.00 additional.

CARLISLE PACKING COMPANY,
[SEAL.] By J. G. BROWN,
Vice-Pres.
AMERICAN SURETY COMPANY OF
[SEAL.] NEW YORK,
By S. H. MELROSE,
Resident Vice-President.

Attest:

J. McGILL,
Resident Assistant Secretary.

Filed in Clerk's Office Feb. 6, 1919.

PERCY F. THOMAS,
Clerk,
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Stipulation Extending Time for Filing and Serving Statement of Facts.

It is hereby stipulated, by and between counsel for the respective parties, that the time within which the defendant may serve and file its proposed statement of facts in this cause may be extended to and including the 10th day of March, 1919.

This stipulation is entered into for the convenience of the court reporter who reported the case.

Dated this 27th day of February, 1919.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

Filed in Clerk's Office Mar. 1, 1919.

PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Order Extending Time for Filing and Serving Statement of Facts.

Now on this 1st day of March, 1919, came the parties in the above-entitled cause, by their respective counsel, Arctander & Lysons, attorneys for plaintiff, and Hadley & Hadley and Kerr & McCord, attorneys for defendant, and presented a written stipulation between

the parties that the time for filing and serving defendant's proposed statement of facts in this case may be extended to and including the 10th day of March, 1919.

Now Therefore, in consideration of the said stipulation, it is hereby ordered that the time for filing defendant's proposed statement of facts in this case may be and is hereby extended to and including the 10th day of March, 1919.

Done in Open Court the day and date above mentioned.

BOYD J. TALLMAN,
Judge.

Filed in Clerk's Office Mar. 1, 1919.
PERCY F. THOMAS,
Clerk,
By W. T. HATT,
Deputy.

55 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Acknowledgment of Service of Defendant's Proposed Statement of Facts.

We hereby acknowledge due service of defendant's proposed statement of facts in the above entitled cause, by the delivery to us of a copy thereof after the original was duly filed, this 10th day of March, 1919.

ARCTANDER & LYONS,
Attorneys for Plaintiff.

Filed in Clerk's Office Mar. 14, 1919.
PERCY F. THOMAS,
Clerk,
By W. T. HATT,
Deputy.

56 STATE OF WASHINGTON,
County of King, ss:

I, Percy F. Thomas, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington, in and for the county of King, do hereby certify that the foregoing is a full, true and correct transcript of so much of the files and record in Cause No. 127,113, Ole Sandager v. Carlisle Packing Company, as I have been directed by appellant to transmit to the Supreme Court on ap-

eal, together with the original statement of facts and exhibits hereto ttached and also the depositions of John Peterson, Iver N. Stens-rud, Nels Hawkinson, Hans D. Sorvick, Chas. Foyston, Nick Loren-en, Jens Foldvik and Dr. W. W. Council.

In testimony whereof, I hereunto set my hand and affixed the seal f the said court this 7th day of May, A. D. 1919.

[SEAL.] PERCY F. THOMAS,
County Clerk.
By W. T. HATT,
Deputy Clerk.

No. 127,113.

OLE SANDANGER, Plaintiff-Respondent,

v.

CARLISLE PACKING COMPANY, Defendant-Appellant.

upplementary Record on Appeal from the Superior Court of the State of Washington in and for the County of King to the Supreme Court of the State of Washington.

In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Plaintiff's Præcipe for Supplementary Record on Appeal.

Percy F. Thomas, clerk of said court:

You will please take notice that the plaintiff in the above entitled tion, who is the respondent on the appeal therein to the Supreme urt, deeming certain parts of the files and record, which have not en sent up to the supreme court at the behest of the appellant rein, to be material to the review of the matters embraced within e appeal, to-wit; that he deems material to such review the deposi-ns of Isaac Utness and John Jorgenson taken in behalf of plain-f in said action, also the depositions of Andrew Lund, Louis Sten-n, Ingvald Sandanger, and Emanuel Olson also taken in behalf of laintiff in said action and duly on file and of record in said cause this court, hereby requests and demands that your prepare, certify d send up a supplementary record and transcript on appeal em-acing such omitted files and records, to-wit; embracing the original positions of said Isaac Utness and John Jorgenson and further the

original depositions of said Andrew Lund, Louis Stenson, Ingvald Sandanger and Emanuel Olson, and each and all of the same.

And you are further requested to file such supplementary record in the supreme court in and for the State of Washington prior to the hearing of the appeal in said action in said court in order that such supplementary record may be considered by the court as part of the record on appeal, so far as the same may be material to the
59 review of the matters embraced within the appeal.

Dated this 6th day of January, 1920.

Respectfully yours,

ARCTANDER & LYSONS,
Attorneys for Plaintiff and Respondent in the Above-entitled Action.

Filed in Clerk's Office Jan. 6, 1920.
PERCY F. THOMAS,
Clerk.
By A. N. OLSON,
Deputy.

60 OLE SANDANGER,

v.

CARLISLE PACKING COMPANY, a Corporation.

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Depositions.

In the Superior Court of the State of Washington for King County.

No. 127,113.

Ole Sandager, Plaintiff,

v.

Carlisle Packing Company, Defendant.

Stipulation to Take Depositions.

It is hereby stipulated and agreed by and between Arctander & sons, attorneys for plaintiff in the above entitled action, and Had- & Hadley and Kerr & McCord, attorneys for defendant in said ac- that, inasmuch as Emanuel Olson, Louis Stenson, Andrew Lund d Ingvald Sandanger are necessary and material witnesses for plain- in the above entitled action, and inasmuch as all of said witnesses about to depart from the city of Seattle, King County, and will return to King County in time for the trial of said action,

Now, therefore, it is hereby stipulated that the testimony and dep- sions of all of said four parties be taken before Earl E. Richards, Notary Public in and for the State of Washington, residing in ttle, King County, Washington, at the offices of Hadley & Hadley the Colman Bldg. of said city of Seattle on this 30th day of March, 8, at 10 A. M., and,

It is further stipulated and agreed that the testimony of said wit- ses may be taken by said Notary in shorthand and afterwards scribed by him into typewriting, and that the reading of said positions to said witnesses and each of them is hereby expressly ved, and that the parties further waive the signatures of said wit- ses to their depositions and testimony, and,

It is further stipulated and agreed by and between the parties, that and all objections to any questions propounded to said witnesses for any other reason than that of the form of the question, may be interposed at the trial of said action without such ob- jection being noted or entered at the time of the taking of said positions, but that all objections to the form of any and all ques- ns, shall be deemed waived unless noted and entered at the time the taking of said depositions and,

It is further stipulated and agreed by and between said parties, ough their respective attorneys, that said depositions may be read the trial of said action with the same force and effect as if the said tnesses were present and testified in open court as in said deposition forth, unless it shall be made to appear to the court that, at the e of the trial of said action, the reason for taking said depositions d for submitting the evidence of said wi-nesses by said depositions d then ceased,

The parties further waive all formalities and formal defects in the taking or reading of these depositions.

The oath of the Notary Public is waived.

Dated this 30th day of March, 1918.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

63 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Be it remembered, That on the 30th day of March, 1918, at 10 o'clock a. m., pursuant to the attached stipulation between counsel for plaintiff and defendant, before the undersigned, a Notary Public in and for the State of Washington, appeared John W. Arctander (of Messrs. Arctander & Lysons) counsel for plaintiff, and Mr. C. M. Hadley (of Messrs. Hadley & Hadley) counsel for defendant.

Whereupon the following proceedings were had:

64 ANDREW LUND, produced as a witness on behalf of the plaintiff, having been first duly sworn by the Notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Arctander:)

Q. Mr. Lund, do you reside in Seattle now?

A. Yes sir.

Q. Do you expect, in the near future, to go away from here, up to Alaska, for the summer?

A. Yes sir.

Q. Do you know the plaintiff, Ole Sandanger?

A. Sir?

Q. Do you know Mr. Sandanger, the plaintiff—Ole Sandanger?

A. Yes sir.

Q. I will ask you whether or not you were in the employ of the defendant, the Carlisle Packing Company, at their cannery near Cordova, Alaska, during the months of February and March, 1917?

A. Yes sir.

Q. When did you start in to work for them up there, what date?

A. Well, we went up in January, wasn't it? I forget the date exactly.

Q. Don't you remember the date you arrived there, about?
A. We left here——
Q. Well, I will waive that. I will ask you to state whether you commenced to work in the first part of February for them?
A. Yes, I commenced to work there.
Q. The first part of February?
A. The first part of February.
Q. Were you working for them the day that plaintiff was hurt, the 7th of March?
A. Yes sir.
Q. At their cannery at Cordova?
A. At the cannery.
Q. What was your business there, what were you employed at?
A. I was employed as gas engineer.
Q. Gas engineer, to run the motor engine?
A. Yes sir.
Q. Were you changed from that work after you got up there?
A. Yes sir, to installing gas engines.

(Mr. Hadley:)

Q. Installing gas engines?
A. Yes.

(Mr. Arctander:)

Q. Installing gas engines in their motor boats.
A. In their motor boats.
Q. And how soon after you got up there were you changed to that work?
A. Right away.
Q. State whether or not, during the months of February and March, both before plaintiff was hurt and after he was hurt, your duties there called you into the oil house on the dock?
A. Yes.
Q. —near the blacksmith shop?
A. Yes sir.
Q. How often would you be in there during that time?
A. I was in there every day.
Q. Every day. And for what purpose did you have to go in there?
A. To go in and get priming oil and cylinder oil.
Q. Priming oil?
A. Or gasoline.
Q. Priming oil, that is gasoline?
A. That is gasoline.
Q. And cylinder oil?
A. Cylinder oil.
Q. For the different boats?
A. Yes.
Q. At the time plaintiff was hurt, and for some time before that,

state what kind of oils were kept in that oil house, and in what kind of containers?

A. There was kept coal oil, gasoline, cylinder oil, and—what do you call the oil for paint?

Mr. Hadley: Turpentine?

A. Well, this oil they use for paint.

(Mr. Aretander:)

Q. The cylinder oil and the oil for paint, what kind of containers were they kept in?

A. They was kept in wooden barrels.

Q. In wooden barrels. The kerosene and the coal oil—no, the gasoline and the coal oil, what kind of containers were they kept in?

A. They were kept in drums, in 110 gallon drums.

Q. 110-gallon drums, made of what, were they of wood?

A. No, that was made out of iron.

Q. Out of iron. How many were there of those 110-gallon drums laying there in the oil house at about the time that he was hurt, before and after he was hurt?

A. There was two—one coal oil and one gasoline.

Q. One coal oil and one gasoline; and were they both of
67 the same size?

A. Both of the same size, both alike.

Q. And where were they as to their lying beside each other or in different parts of the room?

A. They were side by side.

Q. Sitting side by side. What were they sitting on?

A. What were they sitting on?

Q. Yes.

A. They were sitting on what we call a "horse," that is a plank put up to put them on.

Q. Is it also called a bench up there?

A. Yes sir.

Q. And how were they sitting, were they sitting on the end or sitting on the wide part of the drum?

A. They were lying down on the flat.

Q. Laying on the flat part of the drum?

A. Yes.

Q. Not on the end?

A. No.

Mr. Hadley: On the flat part of what?

Mr. Aretander: Flat part of the drum, laying down.

Mr. Hadley: O, on the side.

Mr. Aretander: On the side.

The Witness: On the side, yes.

Mr. Aretander: I suppose that would be the best way—on the side.

(Mr. Aretander:)

Q. I will ask you to state whether or not, during the month of February and up to the time the plaintiff was hurt, the ends of any

these drums—any of the two drums, were painted either red or white?

A. No, they was all alike; they were rusted.

Q. And black as the other side was?

A. Well, there was rust on them. I didn't see no paint on them.

Q. Didn't see any paint. Now, were there any marks or letterings either one of them, showing what kind of oil there was contained them?

A. No, the only thing I could say, the first I came in I had to and pump it and put it in my hand, to tell the difference—the I got any.

Q. You didn't answer my question if there was any lettering or ting, any letters painted or printed on the end of them, or anyre on the drum?

A. No, I didn't see them, no.

Q. What difference, if anything, was there between the two ms?

A. There was no difference.

Q. Except what there was in them, anything on the outside——

A. I didn't see.

Q. —to distinguish one from the other?

A. I could not tell any difference.

Q. You could not tell any difference. How did you find out?

A. I find out—to pump it up and put it in my hand. I can tell difference, by experience, that gasoline is different from kero-; gasoline evaporates.

Q. That is the only way you could tell which container was oline and which was kerosene?

A. Yes sir.

Q. You say you pumped it up?

A. I pumped it up.

Q. From where?

A. From the top. There is a plug there that we screw out.

Q. You say the top. You mean the side that is laying up, that hat you mean, is it?

A. There is a plug in the side of the drum, like the drum laying n here, here is a plug, and there is one in the end, too, but that ews.

Q. In the end?

A. There is one there, but there was no faucet in it.

Q. There was no faucet in that?

A. No.

Q. The way you got your oil out, both to test it and to fill the that you brought in there, was by unscrewing the iron plug in side, on the side laying up——

A. Yes, on the side laying up.

Q. —and putting the pump — it and pumping it up?

A. Yes sir.

Q. And was that the case with both of these containers, those ms?

A. Yes sir.

Q. I will ask you to state whether there were any 50-gallon drums of coal oil in that oil house during either the month of February or March, up until after the plaintiff was hurt?

A. I never saw any.

Q. If there had been any there, would you have seen that?

A. Yes sir.

Q. Was there, up to the time the plaintiff was hurt, any gasoline or distillate kept in there, in the oil house, in 5-gallon cans, two together in a crate or box?

70 A. I never saw any.

Q. Well, was there any before he was hurt, do you know?

A. No sir, not as I seen.

Q. You are sure of that?

A. Not as I saw.

Q. Do you know when they came in there first, when the first ones—with reference to the time that he was hurt, when the first ones of that kind came from the oil house, was it before or after he was hurt? That is what I want to know?

A. This case gasoline?

Q. Yes, case gasoline?

A. I never saw any come there, before or after.

Q. You never saw any come in, either before or after?

A. We built a new gasoline wharf and that came in after the fishermen went on the fishing ground.

Q. When was that?

A. That will be about—the first he went out, he went out in April.

Q. In April?

A. Yes.

Q. And was that the first time you saw any of these two cans in a crate?

A. That is the first time I ever saw them in the crate, yes.

Q. How long have you been engaged in the business of a motor engineer?

A. About fourteen years.

Q. Running an engine?

A. Running gas engines.

Q. During that time, have you had experience of gasoline

71 explosion?

A. Yes sir.

Q. In the cabin where your engine was?

A. Yes sir.

Q. Have you also had experience where fire has taken place outside from an explosion, not caused by an explosion but by the burning of oil——

A. Yes.

Q. —in the cabin. Did you go into the cabin of this boat the day when it came into the cannery, the day that he had been hurt?

A. Yes sir.

Q. After he had been hurt?

A. Right away.

Q. Right away after it came in. Did you look after things there, the engine and other things, the condition of the cabin?
A. It looks like it had been a pretty good sized explosion.
Q. I simply asked you whether you looked around to see.
A. We looked.

Mr. Arctander: We can waive that other thing.

(Mr. Arctander:)

Q. I will ask the question: From your experience, could you state whether or not there had been any explosion of gasoline in that cabin, had there been any explosion of gasoline?
A. Yes sir.
Q. You could tell that from the looks of things?
A. I could tell that, yes.
Q. And what have you to say about it being a big or violent explosion, or otherwise—a great explosion or just only a small affair?
A. Well, it looks like a pretty—I couldn't say exactly no great explosion, but you could see that it had been exploded up all over the ceiling and everything. It isn't like a fire.
Q. It was not like a fire?
A. No.
Q. In working there on the dock, who was your immediate superior, who were you working under?
A. John Peterson, the Port——
Q. The Port Engineer?
A. The Port Engineer.

Cross-examination.

(Mr. Hadley:)

Q. How often have you been in the oil house before this accident?
A. I used to be in every day.
Q. Every day, for how long?
A. O, a short time, just get in and get some gasoline and——
Mr. Arctander: For how long a time?
Mr. Hadley:) For how long a period?
Mr. Arctander: A week or a month, or whatever it was.
A. I don't quite understand.

(Mr. Hadley:)

Q. How many days?
A. How many days? Well, I was in from the day I came up to the time I went down—I came up to the cannery and I worked there until I quit.
Q. Were you in the oil house the day before this accident?
A. Yes, sir.
Q. Do you remember distinctly that you were?
A. Yes.

Q. Do you remember how the drums and cans were on that day?
A. Where the drums was, yes sir.
Q. Are you real sure the gasoline cans were not in the crates at that time, or is that just your impression?
A. Yes sir.
73 Q. Which.
A. There was no gasoline in crates at that time, and I never saw one in there—in oil house.
Q. I thought you said there were some cans of gasoline in April?
A. Not in old oil house, but in the oil wharf, when they built the wharf, so that the gasoline standing outside that came in April.
Q. Did you get any gasoline in the oil house?
A. I got priming oil in the oil house. That is gasoline; that is what we call priming oil, to prime an engine with. We use distillate, you know, and we use gasoline to prime it.
Q. You say you would pump this priming oil out of the top; that is, as it lay on its side, you would pump it out?
A. Yes.
Q. That was the priming oil?
A. That is priming oil.
Q. Did you get coal oil too, did you ever have occasion to get coal oil?
A. No.
Q. So that you did not pump anything out of the coal oil drum?
A. I did, to find out—the first time I came, to find out which one was gasoline.
Q. When was this?
A. I pumped coal oil to find it was coal oil, and then I pumped in gasoline and finding——
Q. When?
A. The first — I came up.
Q. In February?
A. Yes.
74 Q. After that, you always knew which it was?
A. I always knew.
Q. You didn't draw the coal oil from the spigot at the end, then, did you—a faucet?
A. No, from the top.
Q. There was a faucet at the end of the coal oil drum at this time?
A. No, I haven't see- no faucet.
Q. It might not have been when you first drew it, but at the time of this accident?
A. No, there was a pump to pump it out.
Q. And the coal oil drum too?
A. We used one pump. Changed it after I tested it to find out which was gasoline, I just moved the pump over, and that pump was there all the time.
Q. You used the same pump?
A. Yes.
Q. The coal oil drum was painted white at the end?

A. No sir.
Q. What color was it painted?
A. There was no color to it. It was rust, like the other one.

(Mr. Arctander:)

Q. Like what?
A. Rusty.

(Mr. Hadley:)

Q. You could see a white rim around it?
A. I didn't see any.
Q. What size was the coal oil drum?
A. It was about—one of them 110 gallon drums, what they figure they hold.
Q. You say you have run gas engines for fourteen years?
A. Yes sir.
Q. And have had experience in explosions?
A. Yes.
Q. As one who has had such experience, you know that with sufficient heat, under certain circumstances, coal oil will explode, don't you?
A. Yes.
Q. Just a difference of degree of heat, as I understand; gasoline will explode sooner than coal oil will?
A. The gasoline will explode sooner than coal oil, and it will make more explosion.
Q. However, they will both explode?
A. What?
Q. They will both explode though?
A. O, they will both explode. Gasoline will spread more and blast everything to pieces. If you take a can of coal oil, it wouldn't smash to pieces.
Q. Well, if it would explode it would spread, everything that will explode will spread?
A. Well, gasoline will just come right up in a puff and throw it all over. I have had my whole face burned up the same way as him, and I had fire with coal oil and just spread a little, but it would not explode like the gasoline.
Q. Well, that was just a case of a flare-up with the coal oil, wasn't it in your case?
A. Well, I couldn't—I know coal oil wouldn't explode like gasoline.
Q. With sufficient temperature it will explode; that goes, doesn't it? It is just a question of whether it is hot enough, or not?
A. Well, I never saw coal oil explode like gasoline, and I have seen both of them explode.
Q. Yes; they both explode?
A. Yes, both explode; but more or less.
Q. Well, the point is that it explodes, isn't it?

A. What?

Q. The point is that it does explode; you have said that?

A. The coal oil?

Q. Yes.

A. It don't explode like gasoline.

Q. Well, but it does explode, you say, if it is hot enough?

A. The flame up——

Q. If it is hot enough, you, as one experienced in both gasoline and coal oil——

A. Yes.

Q. —know that if there is sufficient heat coal oil also will explode?

A. I don't know if it will or not. I never tried that. I never had no big quantity of it explode, but I have had coal oil caught
77 fire in a gas boat, and it don't throw it up like gasoline. If your gasoline caught fire, you are going to just puff it right up.

Q. Burns faster, that is all?

A. Explode up, but coal oil will just kind of spread it; it don't explode, in coal oil, like gasoline.

Q. Let me get you straight. Does coal oil explode with sufficient heat, or doesn't it?

A. No.

Q. Even with sufficient heat, coal oil does not explode?

A. It will explode, yes, but don't explode like gasoline.

Q. I didn't ask you that. I asked you if it explodes. Is that your opinion as an expert, that with sufficient heat coal oil will not explode.

A. It will explode.

Q. You say you saw the explosion, or you saw the cabin after the explosion?

A. Yes.

Q. When?

A. Right away after she came in.

Q. The same day?

A. The same day.

Q. And the ceiling was burned?

A. Yes.

Q. For that reason, you judge that this was an explosion rather than a flare-up?

A. That was an explosion, yes. You could see that, plain.

Q. Because the ceiling was burned?

A. No, you could see things was scattered all around in there.

78 Q. O, well, things scattered around——

A. You could see it had been exploding, throw it up.

Q. So far as things were scattered around, that could have been caused by any number of confusions in the general excitement; the fact that things were scattered around does not necessarily mean that they were blown around by the explosion, does it?

A. It looked that way. We went and looked at it——

Q. Because you found things scattered around in the cabin, and because the ceiling was burned, you say that there must have been an explosion, is that it?

A. Yes, there must have been an explosion, as far as I see.

Q. You were working under John Peterson, the Port Engineer there?

A. Yes sir.

Q. How could you get access to the oil house, where did you get the key?

A. The key?

Q. Yes.

A. Well, the first we came up, we got the key from John Peterson, and after we left it open.

Q. After that, what?

A. We left the oil house open. Most of the time the oil house was open, anybody could get in.

Q. When was it open?

A. The oil house there——

Q. Well, about when?

A. Well, when first we came up there, a week or two we left it open once in a while, anybody could go in, and if the key wasn't there you could go in the store and get the key.

Q. O, you would go to the store and get it?

A. Yes, go to the store; and John Peterson had the key

Q. You would get it either from Peterson or from the store?

A. Yes.

Q. Did you ever get it from the blacksmith shop?

A. Yes, got it there too.

Q. At the time of the explosion, where would you get the key, do you remember, from the blacksmith shop?

Mr. Aretander: At the time of this accident.

A. Yes, at that time, yes, the key was hanging inside the blacksmith shop.

(Mr. Hadley:)

Q. You would just go in there and get it?

A. Yes. If the door was not open, we went in the blacksmith shop and got the key. Sometimes left it open so that anybody could go in.

Q. Who would leave the door open?

A. Well, I couldn't tell that.

Q. Did you ever leave it open?

A. Not as I remember.

Q. You are not employed by the Carlisle Company now, are you?

A. No, sir.

Q. When was this oil wharf built?

A. Well, it was built about in April sometimes; I can't say exactly the date.

Q. Some time in April?
A. Yes.
Q. And was all the oil kept there after that?
A. Yes, to my knowledge. I didn't went over to the oth
80 place then, to have any occasion to go over there; all the o
I need I could get it over there.
Q. Over where?
A. In the new oil wharf.
Q. In the new oil wharf?
A. Yes.
Q. I say, was all the oil kept at the oil wharf after that, or d
they use the old oil house too?
A. Not as I know.
Q. You didn't have occasion to go to the old oil house after t
new oil wharf was built, you say?
A. O, yes, some time; lots of things I need, I went over there—
white lead and stuff; we had our paints and everything in there.
Q. Were there any drums in the old oil house after the new wha
was built?
A. Well, I could not tell.
Q. You don't remember?
A. No, I don't.

(Witness excused.)

81 LOUIS STENSON, produced as a witness on behalf of plai
tiff having been first duly sworn by the Notary to tell t
truth, the whole truth, and nothing but the truth, testified as follow

(Mr. Arctander:)

Q. You live in Seattle, Mr. Stenson, at the present time?
A. At the present time.
Q. You expect to go to Alaska within a few days?
A. I figure on going out next week, I believe.
Q. And to remain there during the summer?
A. I will be there during the summer, yes.
Q. Do you know Sandanger——
A. Yes sir, I know him.
Q. —the plaintiff. Did you work during the year 1917, for t
defendant, Carlisle Packing Company, at its salmon cannery
near Cordova?
A. Yes.
Q. You knew the last witness who was on the stand, Mr.
A. Mr. Lund, yes.
Q. —Mr. Lund.
A. Yes sir.
Q. Were you working with him when you were working the
A. Yes.
Q. For awhile anyhow?
A. For awhile, yes.

Q. Both of you working under John Peterson, the Port Engineer?
A. Yes.
Q. When did you go up there?
A. 10th of April.
Q. 10th of April 1917?
A. 1917, yes.
Q. Did you have occasion, after you came in there and up to the time that the strike was, the 8th of May, to go into this oil house on the dock, more or less?
A. I didn't quite get that first word.
(Question read.)
A. I was in there several times every day.
Q. Several times every day during that time?
A. During that time, yes.
Q. During that time after you got up there and until you quit working in there, which you did, I guess, after the 8th, didn't you?
A. I quit there when we went out on strike.
Q. Up to that time, from the time you came in there first, what drums, if any, were there in the oil house, containing kerosene or gasoline?
A. There were two drums, just alike.
Q. Just alike?
A. And I believe there was either two or three wooden drums.
Q. They had other stuff in; we don't care about those. But these drums that were just alike, about what size were they?
A. Well, I don't know what size that is, it must be 110 or 120 gallons.
Q. From 110 to 120 gallons, you think?
A. I think, yes; I am not sure.
Q. Where were those two drums lying in the oil house, whether they in their corner or right by each other?
A. They were laying side by side, right where you went in the door.
Q. And do you know what there was in each one of them?
A. I know there was coal oil in one and gasoline in the other.
Q. And, now, what difference was there between those two drums, on the outside?
A. No difference at all.
Q. No difference at all? Was there anything printed on it, or painted on it, or any marks——
A. No.
Q. —showing that it contained one oil or the other?
A. No.
Q. Were the ends of either one of them painted either white or red?
A. No.
Q. What was the appearance of them compared with the ends of the ends compared with the side that were laying up—the side of the drum?
A. The side—the drum was laying flat; the side was up.

Q. I say, what difference was there between the color, of anything, of the ends and on the side laying up, of the drums?
A. I didn't see no difference.
Q. No difference. Did you use to go to get either coal oil or gasoline from those drums, when you were in there?
A. Yes.
Q. How did you find out which one contained kerosene and which one contained gasoline, of those drums?
A. John Peterson was with me the first time.
Q. The Port Engineer?
84 A. The Port Engineer, yes.
Q. And what did he do in order to find out which contained which—which drum contained which oil?
A. He pumped it out and put it on his hand, and his hand was greasy, so he could not find it out; so he put a little on his tongue and then he found out if it was gasoline and coal oil.
Q. Which one contained gasoline and which contained coal oil?
A. Yes.
Q. And told you?
A. And told me.
Q. After that you knew?
A. Yes.
Q. You went to jest the one that he told you?
A. Yes.
Q. Were there any faucets in the ends of either one of these drums there at the time, during the time you were there?
A. Not from the 10th of April until the 9th of May.
Q. Not from the 10th of April until the 9th day of May?
A. The 8th of May, I mean.
Q. No faucets in the ends whatever?
A. No.
Q. There is a place to put a faucet in, in the end, isn't there?
A. Yes.
Q. An iron plug?
A. An iron plug, there, yes, but no faucet.
Q. No faucet. How did you get the oil out from either one of the drums?
85 A. Used one of them old fashioned pumps, pumped it up.
Q. Where did you put the pump in?
A. In the hole—in the top.
Q. On the top, on the side?
A. On the side.
Q. On top?
A. There is a plug there; we put the pump down there.
Q. There was an iron screw that you could unscrew?
A. Unscrew, yes.
Q. And put your pump in?
A. Yes.
Q. How many pumps did you have?
A. I had only one.

Q. Used that for both of the barrels?
A. Both of the barrels, yes.
Q. State whether or not, during this time that you were there, there were any 50-gallon drums of either gasoline or kerosene in the oil house?
A. No.
Q. There was not?
A. No.
Q. State whether or not during that time that you were there, during the month of April and until you quit—whether or not you saw any 5-gallon cans of gasoline, boxed up or crated up, in the oil house?
A. No.
Q. This oil house was right next to the blacksmith shop, was it?
A. Right close to the blacksmith shop.

Cross-examination.

(Mr. Hadley:)

Q. You came to the cannery the 10th of April?
A. Yes.
Q. A month after this accident, which was March 7th; so that of your own knowledge, you know nothing of the conditions on March 7th?
A. No.
Q. You were there until May 8th the day of the strike?
A. Yes.
Q. You were among the strikers?
A. What?
Q. You were one of the striker-?
A. Yes.
Q. And Mr. Lund was one of the strikers, too, wasn't he?
A. No, Lund wasn't one of them.
Q. You are not in the employ of the Carlisle now, are you?
A. No.
Q. How did you distinguish between these two drums afterwards? You remembered which was which, was that it?
A. I just went by what I was told the first time?
Q. What is that?

(Answer read.)

A. Where they was laying.
Q. And the one that you were told was gasoline, you drew gasoline from?
A. Yes.
Q. And the one you were told was coal oil the other way?
A. Yes.
Q. For what did you use the gasoline and coal oil?
A. Each one of the boats had one gallon can of gasoline and one gallon can of coal oil, and all the boats they had on the harbor there I was supposed to fill the cans for him.

(Mr. Arctander:)

Q. You were supposed to fill those cans, you say?
A. Supposed to fill those cans.

(Mr. Arctander:)

Q. You were?
A. I was, yes, with gasoline and coal oil.

(Mr. Hadley:)

Q. For what did they have the gasoline can?
A. For priming oil.
Q. Was that a different kind of can from the coal oil can?
A. Them gallon cans is.
Q. The gallon cans.
A. The gasoline can is painted red and the other can was not painted at all.
Q. The one painted red meant gasoline, did it?
A. Yes.
Q. And it was your duty, from the 10th of April to the 8th of May, to put gasoline in the red cans and coal oil in the other cans, was it?
A. My duty altogether was working with Andrew Lund, and——
Q. That is the reason you went into the oil house, was it?
A. That is the reason I went into the oil house, yes.
Q. I say you used the same pump in both cases?
A. Used the same pump in both cases.
Q. And you are sure that there was no faucet at the end of either drum?
A. There is no faucet that time I was in there.
Q. That is, from the 10th of April on?
A. 10th of April until the 8th of May.
88 Q. Between the 10th of April and the 8th of May, were there any other drums in there besides these two—I mean any other drums than gasoline or kerosene?
A. No.
Q. When was this oil wharf built?

Mr. Arctander: I do not think he testified about the oil wharf.

A. I don't know anything about it.

Mr. Hadley: Well, it is immaterial. Well, that is all.

(Witness excused.)

INGVALD SANDANGER, produced as a witness on behalf of the plaintiff, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Arctander:)

Q. You are the brother of the plaintiff in this case?
A. Yes.
Q. Ole Sandanger. You live here in Seattle, do you?
A. Yes.
Q. You intend to go north to Alaska in a few days?
A. Yes.
Q. And to stay there for the summer?
A. Yes.
Q. State whether or not you worked for the Carlisle Packing Company at their salmon cannery near Cordova, during the season of 1917?
A. Yes, I did.
Q. When did you come there first and commence to work for them, with reference to the time when your brother was hurt, was it before or after?
A. Four days after he was hurt.
Q. Four days after he was burned?
A. Yes.
Q. I will ask you whether or not you know where this oil house is next to the blacksmith shop?
A. Yes sir.
Q. Up on the dock there. How soon after your brother was hurt were you the first time in that oil house?
A. O, I was in there about a couple of days after I came up.
Q. A couple of days after you came up; it would be about six days after he was hurt, then?
A. Yes.
Q. And were you in these more than once, for the next month or so?
A. Yes, I was in there; the door was open sometimes; I was in there with some other fellows several times.
Q. Several times. Now, I will ask you, the first time that you were in there, about six days after your brother was hurt, what if any drums were there there in that oil house, containing gasoline or containing kerosene, if you know?
A. There was laying two about 100-gallon drums.
Q. About 100-gallon drums?
A. Yes.
Q. Laying side by side?
A. Laying side by side.
Q. In the oil house?
A. Yes.
Q. What difference was there between those two drums?
A. There was no difference at all.
Q. No difference at all. Was there any painting on the end of the drums?
A. There was no painting.

Q. No painting of any kind, either red or white?
A. No, nothing.
Q. Nothing. And were there any letters or names or marks printed or painted on either of them, so that you could tell from that which one contained coal oil and which one contained the other?
A. There was nothing to be seen.
Q. Do you know whether or not there was any spout in the end of either one of those drums at that time?
A. There was a plug, but it was not open.
Q. There was a plug?
A. Yes.
Q. An iron plug?
A. Yes.
Q. No spout?
A. No, there was nothing.
Q. Do you know what there was on top of the side as it was laying there, on each of them?
A. There was a hole on top.
Q. Was there anything in the hole?
A. Well, there was a screw, or what you call plug.
Q. A screw plug in the hole?
91 A. A plug, yes.
Q. That you could screw loose; and in what way did you get the oil from either of the cans?
A. We had to pump it up.
Q. From those holes——
A. Yes.
Q. —on the side. How many pumps did you have there?
A. Only one pump, that I saw.
Q. Used for both of the barrels—for both of the drums?
A. Both of the drums.
Q. At the time that you came up there first, was there any 50 gallon drum in that oil house——
A. No.
Q. —iron drum?
A. Those are the only drums, those two.
Q. Those are the only drums?
A. Yes.
Q. What other containers were there in there, in which other stuff was kept?
A. O, there was this grease.
Q. Lubricating oil—is that what you mean?
A. Lubricating oil.
Q. What was that in?
A. Wooden barrels.
Q. Were there any other iron receptacles or iron drums there except these two that you have mentioned?
A. No, those are the only two iron drums.
Q. And was there any difference—did you observe any difference in regard to these drums and in regard to anything in that oil house,

as you have testified to here, afterwards, when you were in
92 there afterwards, from what it was the first time you were in, six days after your brother had been hurt?
A. There was no difference until the time I went out fishing.
Q. Until you went out fishing?
A. Yes.
Q. And what time was that?
A. That was the last part of April. I went out the 10th of April.
Q. You went out the 10th of April?
A. And I came in about three times after that.
Q. During that time, you were in the oil house, too?
A. I was in the oil house.
Q. Was there any change in any matters from what you have testified to here——
A. No.
Q. —from what you found the first time you were there?
A. There was no change.
Q. Did you see any 5-gallon cans crated up, two together in a crate or box, in there——
A. No, sir.
Q. —while you were there, at all?
A. No. I didn't see any.

Cross-examination.

(Mr. Hadley:)

Q. You say you were first in the oil house about six days after the accident.
A. Yes.
Q. What occasion did you have to go in the oil house?
93 A. After coal oil. I was up in the bunk house and made fire in the stove.
Q. You were in to get coal oil for that?
A. Coal oil, yes.
Q. How did you know which drum had the coal oil in?
A. I had to get John Peterson to tell me which one was coal oil.
Q. John Peterson went in with you that first time?
A. Yes.

(Mr. Arctander:)

Q. You mean the Port Engineer?
A. Yes, that is the Port Engineer.

(Mr. Hadley:)

Q. You say you were in there several times afterwards?
A. Yes, sir.
Q. To get coal oil?
A. No, not exactly coal oil every time. I was in there to get paint sometime.

Q. To get paint?
A. Yes.
Q. Was that first time the only time you drew coal oil?
A. No, I drew coal oil when I went out fishing.
Q. When you went out fishing?
A. Yes, the 10th of April.
Q. You knew which drum it was then?
A. Yes. I remembered the drum he told me. It was the same drums laying there.
Q. Well, do you say you used a pump in the coal oil drum, or was there a faucet?
A. There was a pump.

91 Q. Could you say positively whether there were any crated cans of gasoline in there, or do you just not remember whether there were or not?

A. Well, there was no crates of—no other oil in the oil house, that I could see, find, only them two drums.
Q. How large is this oil house?
A. O, I could not tell you that; about 12 x 12, or something like that—14 x 12.
Q. You would have been likely to see whatever there was in it, do you think?
A. I could see if there was anything, yes.
Q. Where did you get the key to get in, from the blacksmith?
A. No, I got the key from the Port Engineer, John Peterson, and I got the key in the store room once.
Q. You don't know, of course, how things stood the day of the accident, or the day before, because you were not there?
A. No, I was not there.

(Witness excused.)

Hearing was continued subject to the call of the Notary.

95 Seattle, Wash.,

April 22, 1918—4 o'clock p. m.

Continuation of hearing, pursuant to the call of the Notary.
Present; Mr. John W. Aretander, attorney for plaintiff, and Mr. E. S. McCord and Mr. C. M. Hadley, attorneys for defendant.

EMANUEL OLSON, produced as a witness on behalf of plaintiff, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Aretander:)

Q. Mr. Olson, where is your home, where do you reside when you are at home?
A. In Seattle.

Q. Are you going away next Wednesday, with the steamer "Alameda" to Alaska?
A. Yes.
Q. Do you expect to be back here at the time of the trial?
A. No, I don't think so.
Q. Were you working for the defendant, the Carlisle Packing Company, in the spring and summer of 1917?
A. I was blacksmith helper.

(Mr. McCord:)

Q. What is that?
A. Blacksmith helper.

(Mr. Arctander:)

Q. Working as blacksmith helper for that company?
A. Yes sir.
Q. At their cannery near Cordova, Alaska?
A. Yes.
Q. Was there more than one blacksmith shop up at the cannery or on the docks there?
A. No.
Q. Where was this blacksmith shop, in which you were working during that spring, located with reference to the oil house?
A. Alongside of the oil house.
Q. Alongside of the oil house. Do you know the plaintiff, Mr. Sandanger?
A. Yes.
Q. Did you know of the fact of his being burned on board of one of the boats of the company in the month of March, 1917?
A. No, I don't know. Well, I heard there was an explosion on the boat.
Q. Yes, and his being burned?
A. Yes.
Q. And you knew of it at the time?
A. Yes.
Q. You heard of it at the time?
A. I knew of it at the time, yes.
Q. Do you remember what date it was?
A. No.
Q. It was not the first part of March, was it?
A. Well, I could not tell.
Q. You could not say that, but you remember the occurrence?
A. Yes.
Q. Now, at that time where were you working—at the time of that occurrence?
A. I was working in the blacksmith shop.
Q. In the blacksmith shop on the dock?
A. Yes.
Q. Next to the oil house?
A. Yes.

Q. How long prior to the time that he was burned had you worked there as a blacksmith helper in that shop?

A. It was a month before he was hurt, and a couple of weeks afterwards.

Q. A couple of weeks after he was hurt?

A. Yes.

Q. There all of that time?

A. Six or seven weeks, or six weeks.

Q. You were engaged in the same business?

A. Yes.

Q. In the same place?

A. Yes.

Q. During the time that you were working there in the blacksmith shop, state whether or not the key to the oil house was kept in the blacksmith shop?

A. No.

Q. Or by their blacksmith, the blacksmith or yourself?

A. No, it was not in the blacksmith shop.

Q. Did you have any use for getting into the oil house during the time you were there?

A. Yes.

Q. Did you have any occasion to get into the oil house?

A. I used to go into the oil house to get a little oil to fire up the blacksmith's—the forge.

Q. The forge fire?

A. Yes.

98 Q. How often would you go in there?

A. I usually would go in there every other day.

Q. Every other day. Where did you have to go for the key to get into the oil house?

A. Had to go to the storeroom.

Q. To the storeroom and ask who for it?

A. I have to ask the storekeeper for it.

Q. Did you at any time during those six weeks that you have mentioned get the key in the blacksmith shop?

Mr. McCord: I object—

A. No.

Mr. McCord (continuing): — to all this as immaterial, irrelevant, incompetent and hearsay, and move to strike all of his testimony up to the present time as incompetent, irrelevant and immaterial.

Q. Do you remember of being in this oil room either one or two days before the day he was hurt?

A. Yes.

Q. On that day, what drums of oil, if any, were there in the oil house?

A. There was two hundred gallons.

Q. Two one-hundred gallon drums?

A. Two one hundred gallon drums, yes.

Q. What did they contain?
A. There was one gasoline and one kerosene.
Q. One gasoline and one kerosene. Were they standing up or ing down?
A. They was lying down on the rack, alongside of each other.
Q. Down side by side?
A. Yes.
Q. And what difference, if any, was there in the two of them on the outside?
A. No difference.
Q. Both just alike?
A. Yes.
Q. What color were the ends painted?
A. There was not no paint on it.
Q. No paint?
A. No paint.
Q. Neither red on one nor white on the other?
A. No; no paint and no marks.
Q. No paint and no marks?
A. No.
Q. No letters or figures indicating whether there was kerosene or hether there was gasoline in either one of them?
A. No marks at all.
Q. When you went in the oil room to get your kerosene, what did ou get it from?
A. I got it from John Peterson.
Q. No, but what did you get the kerosene from, from what con- iner?
A. I got it from a drum.
Q. From one of those two drums?
A. Yes.
Q. And how did you find out which of those two drums—the first me you went in there, how did you find out which of those drums ontained kerosene and which gasoline?
A. I found out by John Peterson, the port engineer.
Q. The port engineer?
A. Yes.
Q. How did you come to find out from him?
A. Well, I was in the blacksmith shop and I asked him for it and e went out and showed me.
Q. He went into this oil room and showed you——
A. Yes sir.
Q. (Continuing:) —which one was kerosene——
A. Yes.
Q. (Continuing:) —and which one gasoline?
A. Yes.
Q. And after that time you knew which one it was?
A. Yes.
Q. As you were coming in from the door, which one was the one ontaining kerosene?
A. To the right.

Q. The one to the right——
A. Yes.
Q. (Continuing:) —of you——
A. Yes.
Q. (Continuing:) —as you came in the door?
A. Yes.
Q. And after that time, did you always get it from the same barrel, the same drum?
A. The same drum.
Q. I will ask you whether or not you at any time prior to his being hurt and for the two or three weeks after he was hurt—the plaintiff—I mean, saw any 50-gallon drums of oil in the oil house?
A. No.
Q. Were there any there during that time?
101 A. No, there was not any fifty-gallons.
Q. During that time and as long as you worked in the blacksmith shop as you have testified to——
A. No.
Q. (Continuing:) —were there any 5-gallon cans of gasoline in crates or boxes, in the oil room?
A. No.
Q. I mean up to the time that he was hurt?
A. No.
Q. Well, now, after the time he was hurt——
A. Yes.
Q. (Continuing:) —was there any there?
A. Yes, there was.
Q. How long after, and how many?
A. Well, there was two a couple of months after.
Q. A couple of months after he was hurt?
A. A couple of months after he was hurt, yes.
Q. Not as long as you worked there, there was not any?
A. No, not as long as I worked there. I was working in the cannery.
Q. How many of that kind did you see in there a couple of months after he was hurt?

(Mr. McCord:) I object to that as immaterial——
Mr. Aretander: I will waive that.
Mr. McCord (continuing): —irrelevant and incompetent.

(Mr. Aretander:)

Q. State whether or not there was any faucet in the end of any of those drums that you state laid side by side there in the oil house?
A. No, there was not any faucet on them.
Q. No faucet screwed on to them at all?
102 A. No.
Q. How did you get the oil out from either one of them?
A. I got it from the top. There is a plug on the top and I took the plug out and took it out with the pump.

Q. Pumped it out?
A. Yes.
Q. This plug was in the belly—that part of the belly of the drum which was laying up?
A. Yes.
Q. And how many pumps did you have there to pump oil up from either one of those barrels?
A. There was only one pump.
Q. Only one pump?
A. Yes.
Q. For both of them?
A. Used for gasoline and kerosene
Q. And kerosene both.

No response.

Cross-examination.

(Mr. McCord:)

Q. How big a room was the oil room?
A. Well, it was about twenty—no, it was about 10x10, I think it is.
Q. 10x10?
A. Yes.
Q. There were only two drums in it when you——
A. There was only two drums.
Q. Only two drums, I say, when you entered the room?
A. Yes, there was some more drums in there, but there
703 was all for machinist—machinist's oil.
Q. What sort of drums were they?
A. There was small wooden barrels.
Q. No other iron drums?
A. No.
Q. Just the two?
A. Just the two drums, yes sir.
Q. One of them was sitting on the right, as you entered there, and the other on the left?
A. Yes.
Q. How far apart were they?
A. Well, they were laying side by side.
Q. On which side of the door?
A. They was laying on the inside of the door there.
Q. I mean in regard to when you entered, was it on the right or on the left?
A. On the right.
Q. What?
A. On the right.
Q. On the right, both of them on the right?
A. Yes, both of them on the right.
Q. I thought you said, just now, one was on the left of the door and the other on the right?

A. No, I didn't say that.
Q. You didn't say that?
A. No. There was one on the right and—both on the right when you came in the door.
Q. How far apart from each other?
A. Just laying side by side.
Q. How far apart? Could you walk between them?
104 A. No.
Q. How did you get around on the other side of the—the furthest from the door, was that up against the wall?
A. It is right up against the wall.
Q. Both against the wall?
A. Yes.
Q. They could not both be against the wall.
A. When you came in the door here, they was laying on the inside of the door, on the right hand side, and it was up against that wall here, see, the ends.
Q. Right opposite the door?
A. Right opposite the door, yes sir.
Q. Right opposite the door?
A. Yes.
Q. Well, then, it was not on the right——
A. Well, it would be on the right hand side when you came in the door here.
Q. Was it up in the corner of this building, or what?
A. On the corner?
Q. I say, were both of the barrels lying in the corner, the right hand corner of the building?
A. On the right hand corner of the building and by the——
Q. And on the opposite side from the door?
A. Yes.
Q. And in the corner on the right side as you entered?
A. Yes.
Q. Opposite the door?
A. Yes.
Q. And one of the barrels was lying right up against the wall, was it?
105 A. Yes.
Q. And the other right next to it?
A. Yes, sir.
Q. How did you use the pump, then, for the inside barrel?
A. Well, just pumped it right up.
Q. Which barrel was next to the wall and which one had the kerosene in it?
A. The kerosene on the right hand and gasoline in the other.
Q. The kerosene was up against the wall?
A. The kerosene was up against the wall, yes.
Q. And the gasoline was on the outside?
A. Yes.
Q. You say those barrels had no spigot on them?
A. No.

Q. They were round drums, were they?
A. Round drums, yes.
Q. 100-gallon drums?
A. Yes.
Q. There were no other drums in there except those two?
A. No.
Q. What did you use the gasoline for?
A. I used it for light up the torch or for——
Q. Did you use gasoline?
A. No, not gasoline; it was kerosene.
Q. You used the kerosene?
A. Yes.
Q. You didn't use the gasoline at all?
A. No.
Q. What was the gasoline being used for at the time?
A. The gasoline, I suppose it was used for gas boats.
Q. The gas boats?
A. Yes.
Q. Was there any other gasoline on the premises except these two ums?
A. No.
Q. I mean anywhere on the premises of the Carlisle Packing mpany?
A. No, not so far as I know.
Q. Well, do you know whether there was any there, or not?
A. No, there was not any in the oil house.
Q. Did they keep the gasoline elsewhere on the premises?
A. Well, they didn't keep any gasoline any other place than in e oil house, when I was there.
Q. You don't know of any other place where gasoline was stored?
A. No.
Q. On these premises?
A. No, not before I—it was a month or two afterwards, we d——
Q. How long did you work for the Carlisle Packing Company?
A. I worked there eight months.
Q. Worked to the end of the season?
A. Yes.
Q. You are not working for them now?
A. No.
Q. You are working for some other company, now, are you?
A. Yes sir.
Q. How did you happen to leave them?
A. Well, I left them up there because a—well, I was sailing, I went sailing after I left the Carlisle Packing Company.
Q. Why did you leave them?
A. Well, I didn't leave them because—I left them because I like get another job.
Q. You didn't get along with them well?
A. Yes sir, I got along very well.

Q. Why did you leave them then, what was the reason, was there any unpleasantness?

A. There was more in the sailing; that is the reason I left them.

Q. You had no unpleasantness at all?

A. No.

Q. How long did you work for them—when did you go up there, rather?

A. In February, I went up.

Q. And you left them eight months afterwards?

A. Yes.

Q. Do you know the superintendent up there?

A. Yes sir.

Q. What is his name?

A. Nels Hawkinson.

Q. Who is the water superintendent—who had charge of the boats?

A. It was John Peterson.

Q. Who else, anybody else?

A. And was a fellow, Captain Murry, they call him.

Q. Where is he?

A. He was the port captain up there.

Q. Where is he now?

A. He is up in Cordova.

108 Q. How did you get this oil out of the barrels?

A. I pumped it out with a pump.

Q. In what, into what?

A. Into the can.

Q. What sort of a can?

A. It was a little tin can. I had to fill up the can with oil and went into the blacksmith shop.

Q. How much oil did it hold?

A. It held about one gallon.

Q. About a gallon?

A. Yes.

Q. Did you fill it up?

A. Yes.

Q. Filled it up each time you went in there?

A. Yes.

Q. How much did you use to start your fire with?

A. Well, I used waste to dip it in the can and then light it with that.

Q. How much did you use a day?

A. Well, I used about—well, we used about a gallon in a day and a half.

Q. Used a gallon in a day and a half?

A. Yes.

Q. To light the fires in the furnace?

A. Yes, and then we had gasoline—or not gasoline, but kerosene to——

Q. I understand that, but I say you used a gallon and a half a day—a gallon a day, then?

A. We used a little for other things, to clean up things and to take dirt off the iron with.

Q. You were in that place then how long, in the blacksmith shop?

A. I was in the blacksmith shop there about two or three months.

Q. And you used about 90 gallons, then, of kerosene in that blacksmith shop during the two or three months, did you?

A. Yes sir.

Q. About 90 gallons?

A. Yes.

Q. Who was the blacksmith?

A. I think it was that.

Q. Who was the blacksmith?

A. He is named Jorgenson.

Q. Where is he?

A. He is over in Lake Washington.

Q. Lake Washington?

A. Yes.

Q. He is not working for the Carlisle Packing Company?

A. No.

Q. Who is he working for, do you know?

A. He is working for—I don't know the name. What is name of at shipyard over there?

Mr. Hadley: Anderson?

A. Anderson, yes.

(Mr. McCord:)

Q. You are on pretty friendly terms with the plaintiff in this case, en't you?

A. No.

Q. A great friend of yours, isn't he?

Mr. Arctander: Sandanger.

A. Sandanger. Well, he is not a very good friend of me because—I know him when I was up there and I am acainted with him up there, was a friend with him up there.

Q. Are you a friend down here?

A. Yes, we are friends down here.

Q. You have talked this matter over with him, have you?

A. No, I haven't talked it over with him.

Q. Talked it over with Mr. Arctander haven't you?

A. No.

Q. Never discussed it at all?

A. No.

Q. Haven't told Mr. Arctander or the plaintiff what you were going to tell?

A. I just told them the story and that is all.

Q. When did you tell them that, just to-day?

A. I just told them to-day—no, it was—two months ago, because

I went up to Alaska, and I didn't have time to come down here, because I went out on the boat.

Q. You discussed with them what you were going to testify to, did you?

A. No, I haven't.

Q. And you didn't tell him what you were going to testify to?

A. Well, I told him the story, and that is all.

Q. Do you know the man that got this oil out the day plaintiff was hurt?

A. The man——

Q. The man that got the oil that was taken on the boat?

A. No, I don't know.

111 Q. You don't know about that?

A. No.

Q. You never saw him draw the oil out?

A. No.

Q. Where did you say the key of this room was kept?

A. It was kept in the store room.

Q. Who was the storekeeper?

A. The storekeeper, I don't know his name.

Q. Is he up there now?

A. No, I don't think he is up there. He was up there this winter, but I don't think—he got a new storekeeper, I think, this year.

Q. A good many of you people working for the Carlisle Packing Company last year didn't go back, did you?

A. There were many of them didn't go back.

Q. A good many of them got dissatisfied, weren't they?

A. They were satisfied, all the men that worked in the cannery.

Q. What?

A. They were satisfied, all the men that was working in the cannery.

Q. I don't understand you.

A. I say, all the men that was working in the cannery was satisfied; they was all satisfied.

Q. Just those in the blacksmith shop that were dissatisfied?

A. Well, they were satisfied, too.

Q. How far was the blacksmith shop from the oil house?

A. Well, they were alongside of each other.

Q. Alongside. Do you know where the Carlisle Packing Company got its gasoline?

112 A. No.

Q. You don't know whether it got it from Cordova or Seattle?

A. No, I don't know.

Q. You say there was no way to distinguish these two barrels, the gasoline from the kerosene?

A. No, I didn't know anything difference on any of them.

Q. But you inquired, when you went in there?

A. Well, I asked John Peterson.

Q. You can tell the difference between gasoline and coal oil when you see it, can you?

A. O, well, I can tell to smell it.
Q. You can tell from the smell?
A. Yes.
Q. And tell from seeing it?
A. Yes.
Q. Everybody knows that, don't they, that knows anything about gasoline and kerosene?
A. Well, I can't hardly tell it by seeing it, but I can tell by smelling it.
Q. You can tell, one is a good deal thicker than the other isn't it, one is clearer?
A. Well, I don't know, I couldn't——
Q. But you can tell from the smell easy enough?
A. Yes, you can tell from the smell.
Q. Anybody can do that?
A. Yes.
Q. You didn't use kerosene—or I mean gasoline to light fires with, did you.
A. No, not gasoline.

Q. Did you see the plaintiff after he was hurt?
A. Yes, I saw him.
Q. When?
A. I saw him two days afterwards.
Q. Did you see him when he came in, the afternoon he was hurt?
A. No.
Q. Saw him two days afterwards, up at the hospital?
A. I was up to the hospital and saw him.
Q. Who are you working for now?
A. I am working for the Alaska steamship.
Q. Joshua Green?
A. Yes.
Q. That is his company, is it?
A. Alaska Steamship Company.
Q. That is, Peabody and Joshua Green run that company, don't they?
A. No.
Q. Who is the head of that company?
A. It is the Guggenheim.
Q. It is a Guggenheim company, is it?
A. Yes.
Q. Who is the manager of it, president of it?
A. It is Pearson.
Q. How long have you been working for them?
A. I have been working there two months now.
Q. In what capacity?
A. I am on the deck, sailor.
Q. Isn't it a fact that the gasoline was kept in hundred gallon drums?

A. Yes, kept in 100-gallon drums, all of it, gasoline——
Q. And the kerosene was in 50-gallon drums, most of it wasn't it?

A. No, it was in 100-gallon drums, both of them.
Q. All the time you were there?
A. No, not all the time. There was a couple of months, afterwards, after I left the blacksmith shop and after he was hurt, there was building up an oil dock, and he had it outside of the cannery then.
Q. That was after the——
A. That was after he was hurt.
Q. That was after he was hurt?
A. Yes.
Q. You say you went into the room to get some gasoline, just a day or two before the plaintiff was hurt, do you?
A. Yes.

Mr. Aretander: He didn't say gasoline.

A. Kerosene.

Mr. Aretander: He said kerosene.

A. Kerosene.

(Mr. McCord:)

Q. Kerosene?
A. Kerosene, yes. I never used gasoline.
Q. You say you went into this room a day or two before he was hurt?
A. Yes.
Q. And at that time you make the statement that there was not any kerosene or gasoline in tin cans in the place?
A. Yes.
Q. There was none?
A. No, there was none.
Q. There was not any on the premises.
115 A. No.
Q. Do you know that positively?
A. Yes.
Q. There was not any gasoline in cans around those premises at all?
A. No.
Q. At that time?
A. Not in the oil house.
Q. What?
A. Not in the oil house and not around the cannery so far as I saw. I never saw any before or after he was hurt.
Q. Now, don't you think that you rather exaggerate the quantity of kerosene you used in the blacksmith shop—a gallon a day?
A. Well, no. I always used the kerosene there for fixing up iron there was rusty and took the rust off the iron.
Q. Was it in an open can that you had it?
A. It was in an open can, yes.
Q. What did you do with it while you were not using it?

A. It was standing in the blacksmith shop.
Q. Whereabouts?
A. Standing right on the bench. We had a little bench in the blacksmith shop.
Q. The top open, all exposed?
A. It was always open, yes.
Q. It was not covered—the can—at all?
A. Never covered that kerosene can at all.
Q. Sparks flying around there everywhere, weren't there?
A. Yes; it would not explode.
Q. You drop a spark into a kerosene can of oil, it would not explode would it?
A. No.
Q. It would not burn?
A. No.
Q. You have seen sparks go right in on the coal oil?
A. I have seen sparks go right into the kerosene and never explode.
Q. And never burn up, either?
A. No.
Q. And you just kept it out there exposed to the sparks and everything else?
A. Yes.
Q. An open can?
A. Open can was standing right on the bench there.
Q. How far from the forge?
A. Well, it was standing there about three or four feet from the forge

Redirect examination

(Mr. Aretander:)

Q. I think there is a misunderstanding here between you and counsel and myself about the position of those drums. Now, was one of them laying alongside of the wall——

Mr. McCord: I object to the question as leading.

Q. (Continuing:) —and then the other on the outside?
A. No.

Mr. McCord: I object to that question as leading. He can tell the condition.

Mr. Aretander: You did not want to mislead either the court or counsel, did you, Mr. McCord?

Mr. McCord: I am not trying to mislead him, but I don't want the words put into his mouth. I want the record to show I object to it.

(Mr. Aretander:)

Q. Let us understand just how those two drums were laying. First, what did you say they were laying on?

A. They was laying on a rack.
Q. On a rack?
A. On a rack, yes sir.
Q. How was the rack running?
A. The rack was—well, here is the oil house here now——
Q. No, that don't go in that record. Just say how it was with reference to the wall—the rack, whether it ran alongside of the wall or away from the wall?
A. It was a little way from the wall, yes.
Q. How was it running, along the wall?
A. No, they was running out from the wall—the rack was, from the inside wall. I could plan it up here.
Q. Yes, you do that; you take a piece of paper and just show how that oil house was and where the rack was and where the door was. (Handing paper to witness.)
A. (Witness draws with pencil.) Here is the door coming in here. (Indicating.)
Q. Well, mark the door, mark the opening there, mark the opening and then write "door."
A. Write "door," yes.
Q. "Door" in the opening.
A. (Witness writing.)
Q. Now, write "d-o-o-r" there. Now, mark that to show
118 where the door is.
A. Yes.
Q. There, and over on this side?
A. Door here.
Q. And crossways there too, now, put the rack where that was.
A. Well, when I came in——
Q. I don't care where you came in. This is the oil house. Put where the rack is.
A. Here comes the rack.
Q. Well, mark that "Rack."
A. (Witness marks.)
Q. No, you want to spell that "R-a-c-k." You have it "R-a-g." Write it "R-a-c-k;" that makes the rack.
A. (Witness writing.)
Q. Let me write that for you.

Mr. Aretander: I guess you don't object to that, do you counsel.
Mr. McCord: I would like for him to place them and not you.
Mr. Aretander: How?
Mr. McCord: I would like for him to draw what there was there.
Mr. Aretander: I will let him draw it.
Mr. McCord: I think he either knows or he don't know. If counsel will not tell him——
Mr. Aretander: You know all there is—he don't know how to spell it.
Mr. McCord: He knows how to draw it.

(Mr. Arctander:)

Q. Just draw it. We will get in the writing afterwards.

Mr. McCord: Take another sheet of paper.
Mr. Hadley: Take another sheet.
Mr. McCord: Let him draw it himself, now, Mr. Arctander.
Mr. Arctander: O, yes.
Mr. McCord: Let him draw it to suit himself.
A. (After drawing.) There is the drums.

Mr. Arctander: Very well. We will ask the reporter or notary to write where he shows the door. You show him where it is there and let him write it, and write where the rack is.
Mr. McCord: Let him put a "D" for the door.
Mr. Arctander: All right, put a "D" then, where the door is.

A. (Witness puts "d" on paper referred to.)
Q. And then put an "R" where the racks is.
A. (Witness marks on paper referred to.)
Q. And put a "d" where each of the drums—inside of each of the drums.
A. (Witness does as requested.)
Q. Now, that gives correctly the idea.
A. That gives correctly the idea.
Q. And on which side, in which one of the drums was the kerosene?
A. Here is the kerosene. (Indicating.)
Q. Well, wait. Indicate the kerosene drum. Will you put a "k" right above where the kerosene drum is?
A. (Witness does as requested.)

Mr. Arctander: All right. That is all. I offer that and ask that it be returned.

Paper referred to was marked plaintiff's exhibit "A," same being attached hereto and returned herewith.

Recross-examination.

(Mr. McCord:)

Q. Why did you say a moment ago that those drums were right up against the wall?
A. I didn't say they up——
Q. You said they were on the right hand side of the door against the wall to the right didn't you?
A. Against that wall here, you see. (Indicating.)
Q. You said it was not possible to get between them, there was no space between them.
A. One right up against the other, right up against each.
Q. Right up against each other. Did the rack extend out beyond this to the right?

A. Yes, right out.

Q. So that there was room to pass in between the wall on the right and the kerosene drum?

A. Yes, there is room—not between the drums here. (Indicating.)

Q. Not between the drums?

A. Not between the drums.

Q. But you could pass between the wall and the drum?

A. You could pass between the wall here, you see.

Q. And this is about ten feet square?

A. Yes.

Q. Wasn't anything else in that room except those two drums?

A. No. Yes, there was oil for machine oil.

Q. Machine oil; that was in barrels?

A. Wooden barrels.

Q. Where were they located?

A. They was laying on the rack, alongside of that.

121 Q. On the left hand side?

A. Yes.

Q. The rack extended clear across the wall opposite the door?

A. Clear across—right across the building.

Q. Right across the wall opposite the door?

A. Yes.

Q. And the pump was taken from one to the other.

A. Yes.

Q. What sort of pump was it?

A. It was a tin pump.

Q. Did you pump the oil out yourself?

A. Yes.

Q. They kept this door locked up there, did they?

A. Sometimes the door was open there.

Q. Sometimes it was open?

A. Yes.

Q. When was it open?

A. Used to be open—well, once in a while they came to get oil there, and they forgot to lock the door there, so that it was standing open, I think, in the day time.

Q. But you had to go and get the key?

A. When I had to get the key I had to go over to the store.

Q. Did you ever find it open when you came to get oil?

A. No.

Q. You always found it locked?

A. Yes.

Q. That was the custom—to keep it locked, was it?

A. Yes.

122 STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a Notary Public in and for the state of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing depositions of the witnesses Andrew Lund, Louis Stenson, Ingvald Sandanger and Emanuel Olson, on behalf of the plaintiff, were taken before me and reduced to writing by myself, at Seattle, in said county and state, on the 30th day of March, 1918, and the 22nd day of April, 1918, as therein appears, in pursuance of the annexed stipulation.

That the above named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the reading and signing of said depositions by the witnesses was expressly waived by the respective parties hereto.

That plaintiff's Exhibit "A" hereto attached, is the plaintiff's exhibit "A" referred to in the deposition of the said Emanuel Olson.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, this 1st day of May, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Notary fees: $29.00.

123 OLE SANDANGER

v.

CARLISLE PACKING COMPANY.

Depositions of Isaac Utness and John Jorgenson.

124 In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Stipulation to Take Depositions.

It is hereby stipulated and agreed by and between Arctander & Lysons, attorneys for plaintiff in the above entitled action, and Hadley & Hadley, attorneys for defendant in said action, that, inasmuch as Isaac Utness and John Jorgenson are necessary and material witnesses for plaintiff in the above entitled action and, inasmuch as both of said witnesses are about to depart from the city of Seattle, King county, and will not return to said King county in time for the trial of said action, to-wit: that said witness Isaac Utness has enlisted and is about to go to the front, and said

John Jorgenson is about to depart for the territory of Alaska, a
a member of the crew of a fishing schooner operating in Alaska

Now therefore it is hereby stipulated that the testimony and depositions of both of said witnesses be taken before Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle, King county, Washington, at the office of Hadley & Hadley in the Colman Building in said city of Seattle on this 4th day of February, 1918, at 2 o'clock p. m. and

It is further stipulated and agreed that the testimony of said witnesses may be taken by said notary in shorthand and afterwards reduced by him into longhand, and that the reading of said depositions to said witnesses, and each of them, is hereby expressly waived, and that the parties further waive the signature of each of said witnesses to their said depositions, and,

125 It is further stipulated and agreed by and between the parties that any and all objections to any questions propounded to said witnesses for any other reason than that of the form of the question may be interposed at the trial of said action without such objection being noted or entered at the time of the taking of said depositions, but that all objections to the form of the question shall be deemed waived unless noted and entered at the time of the taking of said depositions, and,

It is further stipulated and agreed by and between said parties, through their respective attorneys, that said depositions may be read at the trial of said action with the same force and effect as if the said witnesses were present and testified in open court as in said depositions set forth, unless it shall be made to appear to the court that at the time of trial of said action the reason for taking said depositions and for submitting the evidence of said witnesses by said depositions has then ceased. The parties further waive all formalities and formal defects in the taking or returning of these depositions, and specially consent and agree that the fact that said action is not yet at issue shall not in any manner affect the validity of taking said depositions.

The oath of the notary public is waived.

Dated this 4th day of February, 1918.

(Signed) ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
Attorneys for Defendant.

26 In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff.

v.

CARLISLE PACKING CO., a Corporation, Defendant.

Be it remembered, that on the 4th day of February, 1918, at two o'clock p. m. pursuant to attached stipulation between counsel for plaintiff and defendant, before the undersigned, a notary public in and for the state of Washington, appeared Mr. John W. Arctander (of Messrs. Arctander & Lysons), counsel for plaintiff, and Mr. C. M. Hadley (of Messrs. Hadley & Hadley), counsel for defendant;

Whereupon the following proceedings were had:

ISAAC UTNESS, produced as a witness on behalf of plaintiff, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Arctander:)

Q. Where do you live now?
A. In Seattle.
Q. What has been your business for the last five years?
A. Fisherman.
Q. Are you going to leave the city?
A. Yes.
Q. When?
A. The 7th of this month.
Q. The 7th of February. For what purpose?
A. Military service.
Q. You have enlisted?
A. Yes.
Q. In the Aviation Department?
A. Yes sir.
Q. And you are going where, to start with?
A. Well, to Vancouver, Wash., to start with.
Q. And then to the front?
A. Yes, I guess so.
Q. Who did you work for during the summer season of 1916 as fisherman?
A. I was working for Carlisle Packing Company.
Q. At?
A. Cordova, Alaska.
Q. And who did you work for during the season of 1917?
A. For the same company.

Q. At the same place?

128 A. Yes.

Q. When did you commence to work for them during the season of 1917?

A. The 8th of February.

Q. During the season of 1916, what was your main occupation for them as a fisherman, or something else?

A. As a fisherman.

Q. As a fisherman in one of their fishing boats?

A. Yes.

Q. During 1917, what had you been doing up to the time of the accident to plaintiff, most of the time?

A. Well, I was kind of helper, carpenter helper.

Q. Carpenter helper?

A. When they built the plant.

Q. You know the plaintiff, you know Ole Sandager?

A. Yes.

Q. How long have you known him?

A. For three years.

Q. Three years?

A. Just about three years.

Q. Did you know of his being burned on one of the company's boats?

A. Yes.

Q. I mean something burned.

A. Yes.

Q. He was not burned up, of course?

A. No.

Q. But something burned. Do you remember what date that was?

A. That was the 7th of March.

129 Q. And on what boat was he when he sustained these burns?

A. The "C. P. C. No. 2."

Q. That is, Carlisle Packing Company, I guess, No. 2. Was it a boat owned by the Carlisle Packing Co.?

A. Yes sir.

Q. What kind of a boat was it?

A. Well, it was a gasoline motor for the boat.

Q. Of about what size?

A. 28 foot.

Q. About what size, how many tons?

A. Three tons.

Q. About three tons?

A. Yes, about three tons.

Q. State whether or not you were on board that boat the day that plaintiff was there, the day that he got hurt, burned?

A. Yes, I was on the boat that day.

Q. Had you been on that boat the day before?

A. Yes, I was on the boat the day before.

Q. You were on it during all the day on that day?

A. Well——
Q. (Continuing:) From the time it started until it came back?
A. Yes.
Q. How many times had you been on it before that year?
A. I had not been on it before that year.
Q. State when you had been working on boats for the company the year before—or what kind they were?
A. The same kind.
Q. As this No. 2?
A. No. 2.
Q. What crew was there on board the boat the day that plaintiff was hurt?
A. Four men.
Q. Who were they?
A. Iver Stensland, John Jorgenson, Ole Sandanger.
Q. The plaintiff?
A. Yes.
Q. And yourself?
A. Yes.
Q. That is all?
A. That is all.
Q. What position did Iver Stensland occupy on the boat?
A. He was the boss.
Q. Who had charge of the boat?
A. Iver Stensland.
Q. What was the work of the boat that day, what was it sent to do?
A. Well, it was packing sand from Bristol Bay on Egg Island.
Q. That was the day plaintiff was hurt, that you are speaking of now?
A. Yes, that is the day.
Q. What had the boat been doing when you were on it the day before he was hurt?
A. He was to the trap locations, to find out if all the piling was out or was broke out by the ice.
Q. Who was in charge of the boat that day?
A. Iver Stensland.
Q. Was plaintiff on board the boat that day?
A. No.
Q. And was Ole Jorgenson there on that day?
A. John Jorgenson?
Q. John Jorgenson?
A. No, he was not there.
Q. Who were the other two that were there besides you and Stensland, if there were only two more?
A. There was one fellow, I forget his name; I can't remember his name now; he was a fellow from Cordova.

Mr. Hadley: I have the name of the other two: Frank Johnson——

A. Frank Johnson was one of them.

Mr. Hadley: Bert Bullinger and Frank Johnson.

(Mr. Aretander:)

Q. State what kind of boats were used during the whole of the fishing season of 1916, whether they were the same kind of boats as this, or different kinds of boats, as this No. 2?

A. The same kind.

Q. During the season of 1916, what if anything had you had to do, while on board those like boats, in regard to starting fires in the in the stove and cooking the meals, during 1916?

A. Just used boxes——

Q. What had you been doing during 1916 in reference to starting fires, cooking meals or anything?

A. Well, using——

Q. Well, that is not what I wanted to know, but to what extent you had been having anything to do with that during 1916?

A. How much we had to do that?

Q. What?

A. We always—I have had to do that, to building fire and
132 cooking.

Q. Take your turn with the other boys?

A. Yes.

Q. What kind of stoves did they have during 1916, compared with the stove that was on this boat No. 2 at the time of the accident?

A. They had—it was a cheap sheet iron stove.

Q. I ask you how they compared with the stove that they had on the No. 2 at this time, whether it was the same stove?

A. The same kind.

Q. And what was the nature of the stove that you had there on No. 2 at this time?

A. It was a sheet iron stove.

Q. It was a sheet iron stove?

A. Yes.

Q. How was it built with reference to doors or lids or anything?

A. Yes, there was doors and lids on it.

Q. How many doors?

A. One.

Q. Where was that door?

A. It was in the front of it.

Q. On the side of the stove, in front?

A. On the side, yes.

Q. And were there any lids?

A. Yes, there was two.

Q. Two lids on top?

A. Yes.

Q. How thick was this sheet of iron of which the stove was made? Can you compare it with anything that we would know?

133 A. The same kind as the ordinary stove pipe they use, sheet iron stove pipe.

Q. As the ordinary sheet iron stove pipe?

A. Yes.
Q. What was the fuel which was used for these stoves to cook on, during 1916?
A. It was wood.
Q. And what kind of wood or what kind of fuel was used on this boat, the day before the man was hurt, and the day when he was hurt?
A. Wood.
Q. What kind of wood was it the day that he was hurt?
A. Well, it was egg boxes.
Q. Egg boxes?
A. Yes, thin egg boxes.
Q. Broken up?
A. Yes.
Q. In small pieces?
A. Sure.
Q. Now, was that the kind of wood there was used for that stove on the day that plaintiff was hurt?
A. Yes.
Q. State whether or not, either at this time, these two days that you were on board this boat, or at any time during 1916, when you were on similar boats, there was any coal furnished, of any kind, to burn in the stove?
A. No, there was not in 1916.
Q. Was there any at this time, this two days, the day before he was hurt and the day he was hurt, was there any coal——
A. No.
Q. —on board the boat at all?
A. Not a bit.
Q. What was the condition of the wood when you had to use it, either in 1916, as a general thing, or these two days when you were out in 1917?
A. Well, it was wet, because we could not keep it dry.
Q. What?
A. Wet. We could not keep it dry on an open boat.
Q. What place did you have to have the wood in?
A. Outside or in the hold.
Q. You mean on the deck or in the hold?
A. Well, you see, there was no difference, the hold was open, the deck was open; it was an open boat, they call it.
Q. It was an open boat?
A. Yes.
Q. With the fish hole in it?
A. Yes.
Q. And in that hole the wood was kept?
A. Yes.
Q. What was it that caused it to be wet?
A. Well, from the rain and from the splash of the waves.
Q. From the rain and from the splash of the waves?
A. Yes sir.
Q. At these times or summers up there near Cordova, state how often you were in the habit of having rains?

A. Well, mostly every day, I think so.
Q. Mostly every day——
A. Yes.
Q. —it was raining?
135 A. Yes sir.
Q. State whether or not this fish hole you mention, in which the wood was kept—whether or not that was open or closed or anything to close it with?
A. Well, there was some kind of cover they used to put over, but it was not tight. The rain water was forcing through there.
Q. Now, I wish you would state to what extent this wood was raw and wet, as to how its condition, as to being wet or raw, affected the possibility of making fires without any artificial means?
A. Well, it could hardly be done, to make fire with the raw wood, without oil or something.
Q. Without oil or something to start the fire?
A. Yes.
Q. I will ask you what means, if any, was generally used during all of the year 1916, when you were there, while you were working for the company, in regard to starting the fire with the wood that you were furnished?
A. Well, we used——
Q. What did you do usually?
A. Used the coal oil.
Q. Used coal oil?
A. Coal oil.
Q. And how did you use that?
A. We poured coal oil on top of the wood and light a match and drop it in.
Q. And light the match and drop it in?
A. Yes.
Q. Was that the general custom of fishermen working for
136 the company during all that season?
A. Yes sir.
Q. And how long had you been working as a fisherman before that year of 1916, when you started for the defendant?
A. Well, I been working for that company for five years.
Q. For that same company for five years?
A. Five years.
Q. I will ask you to state what has been the general custom up there in Alaska, near the cannery of the defendant, for all those five years in regard to how to light the fires—to light them with coal oil, what has been the custom during all those five years, the general custom?
A. Coal oil was used.
Q. It has been?
A. Yes.
Q. That has been the custom, to use coal oil.
Mr. Hadley: The cannery has been there only two years.
A. Well, I worked for this company down here on Lummi Island, on the Sound here, for three years before, as fisherman.

(Mr. Arctander:)

Q. Was the same custom generally prevailing then when you were at this island down here working for the same company?
A. Yes, the same thing.
Q. Do you remember of any time, any occasion on which a different method was used to make the fire than pouring coal oil on, was there any different way?
A. Well, I sometimes used cotton waste.
Q. That had been used for what?
A. From wiping off the engine?
Q. When you had waste you would use that instead of using the oil, is that it?
A. Yes.
Q. Did you often have the waste?
A. O, sometimes, when we cleaned up the engine, we had waste.
Q. But I ask you if you often had enough waste to make fires with?
A. No, there was not many times we had.
Q. There were not many times?
A. No.
Q. On this particular day, what time, about, did you start out in that boat, the day that he was hurt?
A. About seven o'clock in the morning.
Q. Seven o'clock in the morning?
A. Seven or eight.
Q. Was it after or before breakfast?
A. It was after breakfast.
Q. When, about, did you have lunch that day?
A. At a quarter to twelve.
Q. Who made the fire, who started the fire for cooking the lunch that day?
A. I started it.
Q. You started it?
A. Yes.
Q. And what time, about, did you start the fire?
A. Just about eleven o'clock.
Q. At this time, did you use any oil to start the fire?
A. No, I didn't.
Q. What did you use?
A. Some of the old cotton waste was used.
Q. Some of the old waste?
A. Yes.
Q. That was lying there?
A. Used to clean up the engine.
Q. How much of that did you use up in starting the fire?
A. Used all I had.
Q. Used all there was?
A. Yes.
Q. Nothing left——
A. No.

Q. —for a subsequent fire?
A. No.
Q. State who made the fire the day before on that boat?
A. Stensland was firing.
Q. He started the fire?
A. Yes.
Q. What did he use in starting the fire?
A. He used oil.
Q. What kind of oil?
A. Kerosene, of course
Q. Kerosene oil. That is, kerosene and coal oil is the same thing?
A. Yes.
Q. You mean the same thing. Do you know whether or not when you came in to shore to the cannery that night—I mean the night before plaintiff was hurt—whether or not there was any coal oil left in the can——
A. No.
Q. —that Stensland had used?
139 A. No. There was not any. We got in kind of late that evening. So we didn't have oil enough to light the lantern with, so we went in in the dark.
Q. You got stuck on the mud flat there?
A. Yes, we got stuck on the mud flat. We had to wait until nine o'clock in the evening before we could get off.
Q. And you tried to light your lantern, but found you didn't have any left of the oil in the kerosene can?
A. No, there was no more
Q. No more left. What do you know about there being a particular can that was used for the purpose the year before, and also in the other boats, and left in this boat the two days that you were there, for the purpose of lighting the fire in the stove and for filling the lanterns—a kerosene can, what do you know about that?
A. We had a kerosene can—1-gallon can.
Q. A 1-gallon can?
A. Yes, made for that purpose.

(Mr. Hadley:)

Q. For what purpose?
A. For kerosene, for coal oil.

(Mr. Aretander:)

Q. For what purpose; be used for what?
A. To make fire with and——
Q. Lighting what?
A. Make fire with and fill up the lantern with.
Q. And fill up the lanterns with. Where was that? You say that was a gallon can?

A. It was a gallon can, yes.
Q. And how was it fixed, did it have any spout on it?
A. Yes.
Q. About how thick was the opening of the spout?
A. O, just about—well, you could get a pencil through.
Q. So as to get a pencil through?
A. Yes, just about.
Q. And where, if anywhere, did that kerosene can usually stand, when you were traveling?
A. Used to have it on the bench just in front of the stove.
Q. A bench in front of the stove?
A. Yes.
Q. And what if any marks was there on that can at this time, the first day and the second day, or the day that this injury happened, to the plaintiff and the day before, was the can marked in any way, and, if so, what?
A. It was marked "coal oil" on the can.
Q. "Coal oil?"
A. "Coal oil," yes.
Q. Was it marked "Coal oil" or "Kerosene" do you know?
A. Well, it was—I guess "Coal oil" was the name.
Q. "Coal oil" you think was the lettering on it?
A. Yes.
Q. Had you noticed what time it would take this kind of stoves that you had on board that boat to get cold after the fire went out?
A. Well, about two or three minutes.
Q. Two or three minutes after the fire went out the stove would be cold?
A. Yes.
Q. After you had started the fire for that lunch, did you stay around there and attend to the fire until the lunch was cooked?
A. Yes.
Q. And were you there around the stove until the fire had gone out?
A. Yes.
Q. Who helped to bring the lunch away from the stove and where was it brought?
A. Stensland brought it up on deck.
Q. Up on deck, from the stove?
A. Yes, he wanted to eat it up on deck, you see.
Q. Brought it up in the kettles?
A. Yes.
Q. Now, when he took the kettles away did you notice whether or not there was any more fire burning in the stove?
A. No, it was ashes.
Q. The fire was all out?
A. Yes.
Q. Do you know whether the stove was cold or hot when he took them away?

A. Well, it was kind of hot when he took it away, but it was only ashes in the stove when he took it away, there was not any fire.

Q. There was not any fire?

A. No.

Q. And how was it as to being hot or cold or middling hot or middling cold?

A. Well, it was middling hot.

Q. Middling hot at that time. Did you go up with him then when he brought the meal up?

A. Yes.

Q. Or lunch up?

142 A. Yes.

Q. On deck?

A. Up on deck.

Q. And you took your lunch, all four of you, up on deck, together?

A. Yes.

Q. After you had taken your lunch, what did you do there?

A. Well, we was hunting for ducks along the shore.

Q. You ran the boat along the shore, hunting for ducks?

A. Yes.

Q. And how long a time after you had sit down to your lunch before any fire was started in the stove again?

A. About two hours and a quarter.

Q. Two hours and a quarter?

A. Yes.

Q. Did you hear anything about—any orders given, who should start the fire and for what purpose?

A. Yes, Stensland told Ole Sandanger to go down and make fire.

Q. For what purpose?

A. For cleaning dishes.

Q. For dishwashing?

A. Yes.

Q. And that you say was about two hours and a quarter after you had sit down to lunch?

A. Yes.

Q. From the time you sat down to lunch until the plaintiff, on the order of Stensland, went down to light the fire, state whether or not any of you four had been near the stove?

143 A. No.

Q. When plaintiff was told to go down and light the fire what did he do?

A. Well, he went down.

Q. This stove was in what part of the boat, what do you call it?

A. In the forecastle.

Q. In the what?

A. Forecastle.

Q. In the forecastle?

A. Yes.

Q. You saw him go down there?

A. Yes.

Q. Now, what did you do about the same time?
A. I went down to oil up the engine.
Q. And when the explosion occurred, how far, about, were you away from the stove?
A. About six feet away from the stove.
Q. About six feet away from the stove, down in the same forecastle?
A. Yes, close by the door.
Q. State whether or not you saw the plaintiff put any of the wood into the stove?
A. No, I didn't see him do that.
Q. And what did you see, what is the first that you observed that he was doing?
A. Well, he poured oil in the stove and then he——
Q. From what can did he pour the oil in?
A. From that coal oil can.
Q. That gallon can that you have mentioned here?
144 A. The gallon can, yes.
Q. And how was he holding it when he poured it in, in what hand?
A. He held it this way and just poured it in, and took it in his right hand and grabbed the match with his left hand and dropped it down into the stove, and that is the last I knew.
Q. The last you knew?
A. Yes. It went up.
Q. Did you see anything right after that?
A. Well, it exploded. That is all.
Q. Saw flames?
A. Saw flames, yes.
Q. How far, in your judgment, at the time he dropped the match in there, did he hold the can away from the stove?
A. Just about two feet away from the stove.
Q. Above the stove?
A. No, on the side.
Q. On the side of the stove?
A. Yes.
Q. Did you notice what became of that can, did you see anything just then, what happened to it, or did you afterwards see it?
A. I saw it afterwards.
Q. You didn't see anything just then what became of the can?
A. No, it went too fast.
Q. It went too fast?
A. It went too fast.
Q. What did you see afterwards about the result on the can?
A. The can was all split up, there was no more can. It was
145 one hole on one of the sides, and then the bottom was out.
Q. When he was pouring in this oil could you see whether or not the can at that time was full or nearly empty?
A. It was full.
Q. You could see that from the way he was holding it, pouring it?
A. Yes.

Q. Did you see who brought that can aboard the boat that morning?
A. Yes.
Q. Who was it?
A. Iver Stensland.
Q. The boss?
A. Yes.
Q. The boss of the boat?
A. Yes.
Q. Did you see where he placed it?
A. Yes.
Q. Where did he place it?
A. In the same place where we always used to have it, in front of the stove on the bench.
Q. On the bench in front of the stove?
A. Yes.
Q. And there is where you used to always keep the kerosene can?
A. Yes.
Q. On the other boats that you were on?
A. Yes.
Q. What happened to you when that explosion took place?
A. Well, I went out through the door, the pressure;—
146 Q. Pretty quick?
A. You bet quick.
Q. Did you suffer any burns?
A. Well, I burned my hair. I couldn't eat for a couple of days. Didn't work for three or four days—didn't work; I got burned on the throat.
Q. By inhaling?
A. Yes, inhaling.
Q. What happened to the boat after this explosion?
A. Well, the boat was running full speed and he ran for awhile and the engine stopped.
Q. And what?
A. The engine stopped a little bit afterwards.
Q. Stopped of itself.
A. Yes.
Q. Did the boat take fire? That is what I wanted to know?
A. Well, it was burned all black inside.
Q. Burned all black inside?
A. Yes.
Q. Did you see the plaintiff after the explosion, immediately after the explosion did you see him?
A. Yes.
Q. How was he in regard to——
A. Well, when he came up from the hole the fire was flaming all around him, you see.
Q. The fire was what?
A. It was burning all around his clothes.
Q. In his clothes?
A. Yes.

Q. What was he doing?
147 A. He was hollering for a life preserver.
Q. And did he do anything else except hollering?
A. Yes, he was running around on deck there.
Q. For what purpose?
A. Well, he jumped in the Bay to stop the fire; that is the only way.
Q. To quench the fire in his clothes?
A. Yes.
Q. And did he finally jump in the Bay?
A. Yes.
Q. Were there or were there not any life preservers on board that boat?
A. No, there was not.

Mr. Hadley: I object to that as immaterial.
Mr. Arctander: Well, you know it is the understanding.
Mr. Hadley: All right.

(Mr. Arctander:)

Q. During your experience as a fisherman, how many times do you think that you have started fires on boats—in stoves on board a boat, with the aid of kerosene, by pouring kerosene over it, or seen others do it?
A. Well, hundreds and hundreds of times over again.
Q. Hundreds and hundreds of times?
A. Yes.
Q. I will ask you to state whether you ever saw an explosion caused by the use of kerosene in starting a fire when you have done or when others have done it, during your experi-nce as a fisherman?
A. No, I haven't seen any explosion on a boat.
Q. This time, was there or was there not an explosion?
148 A. There was an explosion.

Cross-examination.

(Mr. Hadley:)

Q. You say you were aboard the boat the day before the accident, also?
A. Yes.
Q. Was that the day before or the second day before, to be accurate?
A. It was the day before.
Q. You are sure it was the day before?
A. Yes, the day before.
Q. That was the only time you had been on board before?
A. Yes.
Q. That year. Stensland was the boss in charge both days?
A. Yes.

Mr. McCord: I object to that, Your Honor, comparing it to something that is not here, as incompetent, irrelevant and immaterial.

The Court: How is that?

Mr. McCord: I object as incompetent, irrelevant and immaterial, comparing it with ordinary camp stoves. Then we have to find out what that is.

The Court: It is for the purpose of describing the situation, that is all.

Mr. McCord: He has already described the size of it and what it was made out of, and given the dimensions.

The Court: I do not know whether that is material or not.

33 Mr. Aretander: I will waive it. It will cost less to let it go.

(Mr. Aretander:)

Q. Were there any doors in the stove?

A. Yes, there were two doors.

Q. Two doors. In what part of the stove were they?

A. They were in the front of the stove.

Q. The front of the stove?

A. Yes sir.

Q. At the outer edge of the bench, the front or outer edge of the bench?

A. Yes.

Q. And was there anything on top of it?

A. Yes, there was two lids on top of it.

Q. Two lids on top?

A. Yes.

Q. And what were they, do you know?

A. They were made out of the same kind of iron; was a little bit heavier.

Q. A little bit heavier?

A. Yes.

Q. When you came down there to make the fire, or start a fire, was there or was there not any heat in the stove?

A. No sir

Q. Was there any fire in the stove?

A. No, there was no fire.

Q. Were there any embers in it?

A. No sir, there was no embers.

Q. What was there in the bottom of it?

A. There was a little bit of ashes.

Q. A little bit of ashes. Now, what did you do about

34 the lids when you came down there first?

A. I took the lids off with my hands.

Q. With your bare hands?

A. Yes sir.

Q What were the lids, with reference to being cold or warm?

A. They was cold.

Q. What degree cold?

A. Yes, they were cold.

Q. How cold?
A. Was cold altogether.
Q. Thoroughly cold?
A. Yes, entirely cold; no heat at all.
Q. Did you take both the lids off?
A. Yes.
Q. After you had taken those off, what did you do?
A. I took my hands down in a fan and shoved the ashes.
Q Shoved the ashes?
A. To one side, so that I could get a little wood in.
Q. Shoved the ashes to one side so as to get the wood in?
A. Yes.
Q. Get room for the wood. What did you do that with—shoving the ashes to one side?
A. I put a little wood in.
Q. I asked you what you did that with. What did you use to shove them aside with?
A. I used my hand.
Q. You used your hands?
A. Yes sir.
Q. Bare hands?
35 A. Yes sir.
Q. Now, what did you find about what there was in that stove when you had your bare hands down there, as to there being any heat in it at all?
A. There was nothing else but a little ashes that I had to shove on the side.
Q. You have told that. Now, I ask you what you found in regard to being any heat?
A. No sir, there was no heat.
Q. No heat at all?
A. No.
Q. Were the ashes or was the sand that was there warm at all?
A. No sir, there was nothing warm at all.
Q. After you had shoved them aside, what did you do?
A. I put the wood in.
Q. Was that raw wood?
A. Yes.
Q. Now, I will ask you whether there was any dry stuff around there at all, for kindling?
A. No sir, I couldn't—there was no dry wood around there at all.
Q. Either chopped or otherwise?
A. No sir.
Q. Either to chop up for kindling, or otherwise?
A. No sir.
Q. What did you have to use, in the condition of that wood, in order to start that fire?

Mr. McCord: I object to that as immaterial, irrelevant and incompetent, and not within the issues.
36 The Court: Objection overruled.

A. I had to use kerosene.

Mr. McCord: I move to strike the answer out for the reason that it is irrelevant, immaterial and incompetent, the charge of negligence not being that it was anything other than that there was gasoline used instead of kerosene, that kerosene was customary and usual to be used. I move to strike out all his testimony tending to show that it was necessary to use kerosene, because that is not the allegation of the complaint, that the use of kerosene was negligence, but that the use of gasoline instead of the *the* kerosene was negligence. It is not within the issues.

The Court: Motion denied.

Mr. McCord: Exception.

The Court: He has answered it.

Mr. Aretander: It was a motion to strike it.

(Mr. Aretander:)

Q. I will ask you to state, if you can, to the jury, what was the general and universal custom among the fishermen up there, at this time and before, and what has it been amongst fishermen generally on this coast and in Alaskan waters, if you know, in regard to using kerosene or coal oil to start a fire with on board the boats as they go to make fire in the stove?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial, because it is pleaded that that was the custom, and admitted in the answer.

The Court: Is that admitted?

Mr. Aretander: No. He don't know what he is talking about.

Mr. McCord: I may not know, but I think that is admitted.

37 Mr. Aretander: It is especially denied that there was any such custom. That is all he knows about it.

The Court: Overrule the objection.

(Mr. Aretander:)

Q. What is the general custom, if you know?

A. The custom is that they use kerosene for to start fire.

Q. Do you know whether or not there was at this time a coal oil or kerosene can standing near the stove for that very purpose?

A. Yes sir.

Q. Did you see the can there?

A. Yes sir, I see the can.

Q. What was the size of the can?

A. A gallon can.

Q. Did you see whether or not there was anything marked or painted or stenciled on that can?

A. Yes sir, that was marked "Coal oil" on the can.

Q. "Coal oil" was marked on the can?

A. Yes sir.

Q. Now, where did that can stand at the time that you came

down there and after you had put your wood in, where did the can stand?

A. She was standing underneath of the bench about——

Q. On the edge of the bench?

A. Underneath.

Q. Underneath the bench?

A. Yes sir, about three to four feet away from the stove.

Q. On what side of the stove?

A. In the front of the stove.

Q. Did it stand right out from the stove or did it stand to
38 one side of the stove?

A. It was standing on the port side in the front of the stove.

Q. When you got down there and stood in front of that stove, where was that can, to your left or to your right?

A. It was to my left.

Q. To your left?

A. Yes.

Q. At this time when you saw this can there, when you were about to use it, I suppose, what thought did you have in regard to what was in the can?

Mr. McCord: I object to that as immaterial, what thought he had. We are not trying it on what he thought.

The Court: Objection sustained.

(Mr. Aretander:)

Q. I will ask you to state whether or not you had any reason at that time to doubt that the can contained what was marked on it, coal oil?

Mr. McCord: Same objection, Your Honor, as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Yes, I thought it was coal oil.

(Mr. Aretander:)

Q. Did you have any reason to doubt it, I say?

Mr. McCord: I object to that.

A. No sir.

Mr. McCord: I object to that as incompetent, irrelevant and leading.

The Court: It is for the jury to say whether he had any reason to doubt it.

(Mr. Aretander:)

39 Q. Did you have any doubt about it at all the time?

Mr. McCord: I object to it as incompetent, irrelevant and immaterial, a conclusion, and asking the very thing that is to be tried here.

The Court: Objection sustained.

Mr. Aretander: Whether he had any doubt?

The Court: Yes; whether he had any reason to doubt.

Mr. Aretander: No, I waived that. That you said was for the jury. Then I asked him: "Did you have any doubt at all about its containing kerosene?"

The Court: He may testify whether he knew, or not. Whether he had reason to doubt it, or did doubt it, is for the jury to say.

(Mr. Aretander:)

Q. Did you see anybody bring that can aboard the boat and place it where it was—where you found it there that morning?

A. Yes sir.

Q. Who did?

A. Iver Stensland.

Q. That same can?

A. That is the same can.

Q. You saw that?

A. Yes sir.

Q. And Iver Stensland was the captain?

A. He was the captain, yes sir.

Q. Now, when you stood there and were about to light that fire, what did you do in regard to that can?

A. I took the can in my left hand, and put a little oil in the stove on the wood, the same as I used to.

Q. The same amount as you used to?

A. As I used to.

Q. You say you took it with your left hand?

A. Yes sir.

Q. What part of the can did you take hold of with your left hand?

A. I took it with the handle or the bail on the top.

Q. By the handle or bail?

A. Yes.

Q. You took it in your left hand?

A. Yes sir.

Q. And did you use any other means to get the oil out of it?

A. Yes, I tipped her with the right hand.

Q. Tipped the bottom?

A. Yes.

Q. So as to get the oil out. You poured a little oil on what, on the wood or where?

A. Yes sir, on the wood.

Q. In the stove?

A. Yes sir.

Q. And at that time what was the condition of the doors and of the lids, in regard to the doors being open or closed and the lids being over, or not?

A. The lids was off and the door was open.

Q. And the door was open. After you had poured this in, what did you do with the can?

A. I changed it over to my right hand and was holding the can in my right hand and took a match on the shelf just above the stove, and rubbed the match on my pants, and then I was going to drop it in the stove, and the explosion went immediately after I was going to——

41 Q. As you were going to drop it?

A. Yes sir.

Q. Where was the match box with reference to you as you stood there, was that to your left or to your right?

A. It was to my left.

Q. That is why you took your left hand for it?

A. Yes sir.

Q. Do you know whether or not that match ever reached the wood?

A. No, I could not tell, because the explosion went so quick I don't know anything.

Q. Now, when the explosion happened, were you standing with the can in the right hand, was the can in your right hand when it exploded there?

A. Yes, the can exploded to pieces. I was holding it in my right hand.

Q. You were holding it in your right hand when the explosion came?

A. Yes.

Q. And what effect did the explosion have as to the can?

A. Blowed the can to pieces.

Q. Blowed the can to pieces?

A. Yes, there was nothing left of the can.

Q. How far back of the stove, or in front of the stove, rather, did you hold that can at the time?

A. Oh, about twelve inches.

Q. About twelve inches from the front of the stove?

A. Yes.

Q. And how was the can located when you held it in your hand, with reference to the top of the stove?

42 A. The bottom of the can was top edge of the stove, about.

Q. About a foot out?

A. Yes, about a foot out.

Q. And you say that when the explosion came the can exploded too?

A. The can exploded.

Q. The oil in the can?

A. Yes sir.

Q. And did you find anything about the can afterwards, whether or not——

A. The can was in many pieces.

Q. When did you see it?

A. I saw it when I came aboard again after the explosion.
Q. After you had been in the water?
A. Yes sir.
Q. At this time when the explosion happened, came up, when you tried to drop that match, what happened to you?
A. It throwed me right over on the port side, right against the bunk there.
Q. Right against the bunk?
A. Yes.
Q. On the port side?
A. Yes sir.
Q. Threw you against it?
A. Yes.
Q. What threw you?
A. Well, the compressure, the compressure from the explosion.
Q. What did it do to your clothes?
A. It burned all my clothes off.
43 Q. It took some time to burn all your clothes off, didn't it? You mean it started fire in your clothes?
A. Yes, there was fire all over and I was burning all over.
Q. Burning all over. Now, when this explosion happened—do you know whether it was an explosion or whether it was not?
A. It was an explosion.
Q. You are sure of that?
A. Yes, sir; it was a big one, too.
Q. What effect did it have on the boat, just as that came up there with your feeling of the boat?
A. Sure, the boat was shaking. I thought the whole boat went to pieces.
Q. That is what you thought at the time?
A. Yes. I didn't think of anything.
Q. Now, when you were thrown down there towards the—I say, by the pressure of the explosion you were thrown towards the bunk, as I understand you to state?
A. Yes.
Q. Did you for a moment lose your consciousness then?
A. Yes, I lose my consciousness for a few seconds, and I came to again.
Q. And what was the first thing you knew then when you came to?
A. Well, I happened to know which way to get up on deck.
Q. Yes sir. What condition were your clothes in at that time when you came to?
A. I was all in fire.
Q. Your clothing; it was all on fire?
A. Yes.
44 Q. And what did you do then? You knew what was going on?
A. Well, I started to go up on deck.
Q. What did you go up on deck for?

A. Well, it was the only chance—of course, I was burning all over and there was fire all over and that one chance I had.
Q. Was to get out of the fire?
A. Sure.
Q. When you got up on deck, what did you do?
A. Well, I was looking for life preservers, something to hold onto.
Q. Did you stand still and look around to see, or what did you do?
A. Well, I looked on the cabin, I walked from one side to the other of the boat, I looked into cabin where they used to have the life preservers, if there was any. There was no life preservers on board, I couldn't find any. So I had to jump overboard without any.
Q. You did jump in?
A. Yes sir.
Q. You did jump in the bay?
A. Yes sir, I did.
Q. And how were you saved afterwards?
A. Well, I had to swim to the boat.
Q. Getting into the water, the fire was subdued in your clothes?
A. Yes, the fire went out then.
Q. What?
A. Yes, the fire went out when I go to the water.
45 Q. And they threw a plank to you and you swam to the boat?
A. Yes.
Q. After you came in there,—did you go into the cabin or into this forecastle?
A. Yes, I went in there.
Q. Did you look in around there to see whether there was any life preservers?
A. Yes, I looked into bunks. There was no life preservers, was no life preservers.
Q. No life preservers on the boat?
A. No.
Q. You are positive of that?
A. No sir.
Q. Now, at this time when you were a burning torch there and after you had been in the water and come up again, tell the jury whether or not it was connected with any pains or not?
A. Yes, I was paining so much I didn't know how much I was paining. I had to hold my hands up like this to keep the blood down so that—if I held them down like this, you know, it bled so much, I would not have any blood left inside of a few minutes.
Q. You can't tell it, how painful it was to you?
A. No, I can't.
Q. You can't tell?
A. No.
Q. Was there much pain, or not? I don't see why you can't tell what you experienced there. Let us know a little about it.

Mr. McCord: I object to the question as leading, Your
46 Honor.

Mr. Arctander: No, it is scolding.

Mr. McCord: Scolding and everything else. He can tell whether he suffered pain or not, without being led and badgered into it.

The Court: I do not think that is leading. Objection overruled.

(Mr. Arctander:)

Q. Can't you give the jury an idea about what you suffered there at that time?

A. Well, I suffered so much I don't know—I didn't know how much I suffered; I suffered suffering there. Took an hour and a half before I came into—I can't say how much it is.

Q. What?

A. My hands was burned right up here, the skin was all off and the flesh was burned right on top there too. Finger nails was burned down there and the whole face was burned right down to here. You can see the scar.

Q. You can see the scars now, but there was more than what the scar shows now, wasn't there, at that time?

A. Yes; I got burned inside too. Came up with the flames.

Q. Were you burned in one of thighs?

A. Yes, I was burned on my body too.

Q. What part of the body?

A. It was burned on thighs right there.

Q. On the thigh, the outside part of the left thigh?

A. Yes, the left.

Q. How big a burn was that?

A. Oh, about eight inches long.

Q. How wide?

17 A. About four inches, four or five inches.

Q. That has healed, hasn't it?

A. Yes, sir.

Q. Has that bothered you any since?

A. Well, it don't bother me very much, no.

Q. Don't bother you much now?

A. No, that is healed.

Q. I asked you has it bothered you?

A. Yes, it has bothered me for a long while. It is not quite well yet.

Q. Not quite well. Now, the hands you said were all—the skin was burned away?

A. Yes.

Q. And a part of the flesh?

A. Yes, part of the flesh on top of my hands.

Q. Your hair scorched at all—was your hair scorched at all?

A. No. The eyebrows were burned out. I had a big cap on.

Q. Oh, you had a cap on?

A. Yes.

Q. Your hair was saved?

A. Yes, I saved the hair.

Q. Any of your ears particularly injured?

A. Yes, this ear, the left ear.
Q. Especially the left?
A. Yes.
Q. That ear was all right before, was it?
A. Yes.
Q. Had no trouble?
A. Yes, it was all right then.
48 Q. And anything about your mouth and your nose?
A. Yes, the nose is out of shape. It was burned inside. It burned right down my throat.
Q. Right down your throat?
A. Yes.
Q. And burned outside of your mouth?
A. Yes.
Q. You had none of these scars and marks that you have there now, you didn't have any of them before this fire?
A. No, sir.
Q. They all came from that fire?
A. Yes, sir.
Q. Have you at my request made a little plat—a couple of them—showing in a rough way this forecastle of the boat?
A. Sure.
Q. You have made that?
A. Yes.
Q. You have made that at my request?
A. Yes, sir.
Q. It shows it from the horizontal, doesn't it?
A. Yes.
Q. It shows it down from the top?
A. From the top.
Q. From the top down. Shows the whole——
A. The whole——
Q. (Continuing:) —lay of the room there, of the forecastle?
A. Yes.
Q. And the things that are in it are marked there?
A. Yes.
49 Q. What is this in the center?
A. That is the——
Q. That is marked the engine.
A. That is the engine.
Q. What is this mark to the top of the——
A. This is the edge of the boat.
Q. That is the edge of the boat, of course, it represents the boat?
A. Yes.
Q. What is this square mark near the edge there?
A. That is the companion road, the stairway that comes down.
Q. The stairway you go down from the deck?
A. Yes.
Q. That is marked "Hatchway"?
A. Yes, sir.

Q. Now, what is this that goes around on the—— is that the starboard or port side?

A. That is the starboard.

Q. The starboard side. What is that that is marked "Bench" there, what does that represent?

A. That is the bench.

Q. That is the bench that runs right up to the wall?

A. Yes, right up to the side of the boat.

Q. That the stove stood——

A. Yes.

Q. And that runs from the hind part of the forecastle and to the very——

A. The front, yes.

Q. And what is the thing with two holes in it and marked
50 "stove," does that represent the stove?

A. That is the stove.

Q. As it stood there?

A. Yes, sir, that is the stove.

Q. And this little square above the stove, a little to the left, marked "Match," what does that represent?

A. That is the matches.

Q. That is the place for the match safe?

A. That is the box we had with the matches.

Q. What is the round place, marked "Can"?

A. That is the can—where the can was standing.

Q. That is the place where the can was standing at the time when you took it?

A. Yes, sir.

Q. Now, what is on the other side, the port side, what is this mark?

A. Exhaust pipe.

Q. That is the exhaust pipe that you mentioned here?

A. Yes.

Q. That was leaking?

A. Yes.

Q. And what is the square thing over on the port side, what is the long mark there?

A. That is the bunk.

Q. That is the bunk, the lower bunk?

A. The lower bunk.

Q. What is the square mark?

A. That is the five gallon can.

Q. The five gallon can of gasoline that we have mentioned?

A. Yes.

51 Q. That is spoken of here?

A. Yes.

Q. What is that little thing up in the upper corner, what does that represent?

A. That is the rack that was made for the stove to stand on.

Q. The rack made for the stove?

A. Yes.

Q. And the legs under that?
A. Yes.

Mr. Aretander: This is plaintiff's exhibit. We had one before in the depositions.

Sketch above referred to was marked "Plaintiff's Exhibit A for Identification," and another sketch was marked "Plaintiff's Exhibit B for Identification."

Q. Now, showing you plaintiff's exhibit "B," I will ask you whether or not that is another draft that you made, at my request, of the same thing, showing it——
A. On one side.
Q. —from one side?
A. Yes.
Q. And the markings that you have made on that are true and correct?
A. Yes.
Q. And as to about the different places where the different things were that are marked on there?
A. Yes.
Q. Engine and stove and all of it.
A. Engine; here is the hatch stairway comes down.
Q. Yes.
A. And here is the bench, and here is the floor, and there is the can standing.
Q. You mark it "can."
A. Yes, and here is the stove
Q. And the match.
A. And there is the match.
Q. All right. And there is another picture of that rack?
A. Yes.
Q. Which the stove stood on?
A. Yes, that is the rack.
Q. Those are as true and correct as you could make them from memory of how it was?
A. Yes, as well as I can.

Mr. Aretander: I offer them in evidence as a part of the evidence.
The Court: Is there any objection?
Mr. McCord: I object to them unless they are simply offered as explanatory of his testimony.
Mr. Aretander: That is all, I say as part of the testimony.
The Court: They are not drawn according to scale?
Mr. Aretander: No, they are not drawn to scale or anything; it is simply to explain.
The Court: They may be admitted for that purpose.

Sketches above referred to were marked, respectively, "Plaintiff's Exhibits A" and "B."

(Mr. Aretander:)

Q. How long have you been engaged upon the west coast of the United States and up in Alaskan waters, as a fisherman?

53 A. I have been out on this coast about nine years; been seven years in Alaska.

Q. Seven years.
A. Seven years.
Q. You have been a fisherman up there in Alaskan waters?
A. Yes.
Q. And out in such boats as this?
A. Yes.
Q. Where meals were prepared on board the boat?
A. Yes sir.
Q. I will ask you to state whether or not—I don't know whether your former testimony covered that—whether during those eight years it has or has not, according as you know, been the universal and general custom of fishermen in Alaskan waters to use coal oil in starting fires in stoves?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

A. Yes sir.

Mr. Aretander: Wait. You forget.
The Court: Objection overruled.

(Mr. Aretander:)

Q. You say you know. Is that the custom, universal custom?
A. Yes.
Q. And has been during all that time?
A. That is the universal custom.
Q. The only way you can get fire?
A. Yes.

Mr. McCord: I object as incompetent, irrelevant and immaterial and leading.

54 Mr. Aretander: That is leading. I will withdraw it.
The Court: Objection sustained.
Mr. Aretander: I know I am wrong.
The Court: The jury will disregard the last question and answer.

(Mr. Aretander:)

Q. I will ask you whether or not you have ever seen a gasoline explosion before, in your experience?
A. No sir.
Q. Before this one?
A. No sir.
Q. How many times have you during that experience you have, that you have mentioned here, the eight years or seven years it was—have you ever seen fires started with coal oil on board boats?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. McCord: I move to strike out the answer to the preceding question where he stated that he had never seen any gasoline explosion, as incompetent, irrelevant and immaterial.

The Court: Motion denied.

(Mr. Aretander:)

Q. How many times, about, do you think you have seen fires started with coal oil during this seven years' experience?

A. Thousands of times.

Q. Thousands of times?

A. Yes sir.

Q. Now, I will ask you whether or not you have ever
55 seen—during any of those thousands of times, whether or not you have ever witnessed any explosion occurring from it?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled?

A. No sir, I have never seen any explosion.

(Mr. Aretander:)

Q. Anything like what happened here at all?

Mr. McCord: I object as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. No sir.

(Mr. Aretander:)

Q. Have you during that time seen coal oil poured on where there was fire and heat, and no explosion followed?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial. The witness is not shown to be qualified to give an expert opinion.

The Court: I sustain the objection to that. He has already testified that there was not any heat there, so it is not material in this case.

(Mr. Aretander:)

Q. I will ask you whether or not, at any of the times when you have seen coal oil used in starting fires during these seven years that you have mentioned, and when the coal oil was poured in a stove that was cold, whether you have seen even a flare-up from it?

Mr. McCord: Objected to——

A. No sir.

Mr. McCord: —as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

(Mr. Aretander:)

Q. What was the answer.
56 A. No sir.

Mr. McCord: And I object to it and move to strike it out, now, on the ground that it is incompetent, irrelevant and immaterial, upon the ground that the witness is attempting to give expert testimony and has not shown himself to be qualified to testify. As to whether there were other events at other times too remote from this have nothing to do with this case, and I move to strike it out on that ground.
The Court: Motion denied.
Mr. McCord: Exception.

(Mr. Aretander:)

Q. Have you noticed, during your experience on board these boats for the last seven years, what time it generally takes a stove to cool off—a stove like the one used here—I suppose that is what they use generally, isn't it?
A. Yes.
Q. The same stove.

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.
The Court: Objection sustained.
Mr. McCord: And too remote.
Mr. Aretander: I haven't got my question yet. My first question now—I withdraw that.

(Mr. Aretander:)

Q. In your experience, when you have been out fishing, for this last seven years, what kind of stoves have been used, usually, on those fishing boats, as compared with the stove here?

Mr. McCord: I object as incompetent, irrelevant and immaterial.
The Court: Objection sustained.

57 (Mr. Aretander:)

Q. After the fire, what was the condition of the cabin?
A. Everything was——
Q. When you came back again?
A. Everything was smashed up and scattered all over the floor, dishes and all. The cabin was all black inside, and burning.

Mr. McCord: How is that? I didn't catch that.

(Mr. Aretander:)

Q. Was the cabin—before this accident happened, was it painted or not?

A. She was painted gray.

Q. And what was the condition of it in regard to the paint after the fire, when you came in there?

A. The paint was all burned off and was started on the wood.

Q. And what?

A. And started to burn on the wood. The paint was all burned out.

Q. Was it simply darkened, or was it black?

A. Yes, was black.

Q. Black?

A. Yes.

Q. Did you have any means of knowledge besides the explosion which happened there as to what this can—no, first I will ask you, from what you saw and experienced there, what did that can contain, coal oil or anything else?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial, asking for a conclusion of the witness that he is not shown to have any knowledge of or is an expert on the subject.

The Court: Objection overruled.

58 (Mr. Aretander:)

Q. What did it contain?

A. Gasoline.

Q. Gasoline. You are positive of that?

A. Yes.

Mr. McCord: Hold on. I object. I move to strike the answer out, and I object to the question on the ground that it is leading.

The Court: Oh, he has answered. It is not necessary to ask him whether he is positive. The question and answer will be stricken. The jury will disregard the last question and answer.

(Mr. Aretander:)

Q. Was there anything except the fact of the explosion which convinced you in your mind of the contents of that being gasoline?

Mr. McCord: I object to that, Your Honor, as irrelevant, incompetent, immaterial, asking for a conclusion and opinion the witness is not shown to have any qualifications to give.

The Court: Objection overruled.

(Mr. Aretander:)

Q. Was there anything else except the explosion that convinced you.

Mr. McCord: I object to it on the further ground that it does not make any difference what was in his mind at the time as to the cause.

The Court: Well, he may answer this "Yes" or "No" and then he may say what it was.

Mr. Aretander: That is what I want to get at, that it was the smell of gasoline in there. Counsel knows it. I stated it in my opening.

(Mr. Aretander:)

Q. Was there anything else that convinced you about what
59 was in there?

Mr. McCord: Your Honor, what his reasons are seems to me to be wholly immaterial.

The Court: He is asking whether there is anything else. He may state, if there was, what there were. He may answer the question.

A. No sir, there was not anything else.

(Mr. Aretander:)

Q. Nothing else except the explosion?

A. No sir.

Q. Have you reference now to the time when the explosion happened, or have you also reference to the time when you came up from the water?

A. Yes sir.

Q. When you came up from the water, did you notice any smell in the cabin there at all?

A. Yes I—was gasoline smell in the cabin.

Q. Then there was something else, wasn't there?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial and argumentative.

The Court: Well, I sustain the objection to that question.

Mr. McCord: Counsel persists in trying to make an argument after every question.

(Mr. Aretander:)

Q. After you came up from the water and went into that cabin, what did you find in regard to smell?

A. Well, I find there was—been a gasoline explosion.

Q. What did you find as to smell, I say?

Mr. McCord: He has already answered the question that he found a gasoline smell.

Mr. Aretander: Well, can't you let him tell it?

60 Mr. McCord: He has already said that. I object to it as repetition.

The Court: That is all you want to bring out, isn't it?

Mr. Aretander: What?

The Court: That is what he said. That is all you want to bring out, isn't it?

Mr. Aretander: That is all I wanted to bring out.

Mr. McCord: He has brought it out and answered the question several times.

The Court: He has answered that way.

Mr. Aretander: Well, it is not easy for me to find out what this witness answers and what he does not answer because he does it in such a——

The Court: He may answer again.

(Mr. Aretander:)

Q. Now, what did you discover when you came up there, as to smell?

A. I discovered a gasoline smell.

Q. A gasoline smell in this forecastle?

A. Yes sir.

Q. I will ask you to state whether or not you were running around trying to get any life preservers there, whether or not that had any influence in regard to exposing you more to the fire?

A. Yes; if I could find life preservers handy, I could jump overboard right away; so I got more burned because I was looking for life preservers.

Q. How long were you in the hospital up there?

A. About a month.

Q. What time about in the day did you come to the hospital?

A. It was about 7th of March.

61 Q. How?

A. 7th of March I came to the hospital.

Q. I know it was the 7th of March, we are talking about the 7th of March all the time. What time in the day?

A. It was about a quarter after three or about half past three.

Mr. McCord: What hour was that?

Mr. Aretander: A quarter after three or half past three.

(Mr. Aretander:)

Q. What trouble, if any, have you had with your hands since they healed up, since the sores healed up?

A. I have trouble with them all the time. There is paining, weak. I can't do any work with them.

Q. In what way?

A. I can't life anything. When I lift anything, they are so weak I have to sit down. I can't do any work with them as I used to do before.

Q. As you used to do before?

A. Yes sir.

Q. Now, when did that quit, when did you get over it, if ever.

A. I don't know, I don't think I will ever get over it.

Q. You haven't got over it yet?

A. No sir.

Q. Now, about your eyes, what was their condition right after you were injured there, for some time afterwards?

A. Well, they used to pain awful all the time, and I can't see so good as I done before.

Q. But right after the injury, while you were in the hospital, how much could you see?

62 A. When I was right in the hospital, I could not see anything for ten or twelve days.

Q. Ten or twelve days.

A. I couldn't see anything at all.

Q. What was the condition of your eyes during that time?

A. Well, they were awful bad condition.

Q. Do you know whether they were swollen up or not?

A. Well, they were swollen up. The whole head was swollen up, just even with my shoulder; I couldn't see the nose or anything, everything was swelled up, I couldn't see nothing.

Q. Any pains in your eyes?

A. Yes sir, pains awful.

Q. Now, how about those marks that you have got there, as to whether or not they still pain you?

A. Yes, they pain all the time.

Q. Which particular ones?

A. Well, they pain, specially when I usually do any work, pains more——

Q. I mean the scars in the face; they are not affected by your work, are they?

A. No. Well, they are worse when I work, when I get—when blood starts circulation.

Q. When the blood starts circulation?

A. Yes, then they swell up and get bigger.

Q. The scars?

A. Yes, and pain all the time, since all the time I can feel them, all the time there is there. And this side is paining all the time.

Q. The ear on the left side is paining you all the time?

63 A. Yes, and this one is paining me too, but not so bad.

Q. I will ask you whether or not your hands and your face and your sores and scars have particularly ever since that time been sensitive to cold?

A. Yes, when I go out in the cold outside, when it is a cold day, I get cold all over, the hands and face get—face gets yellow and then I go out in the sun, it gets red as blood.

Q. How have your eyes been since the time you were hurt?

A. The eyes have been awful bad.

Q. When did you come down here from Cordova, about what time did you come down?

A. I came down from Cordova about the 18th of July or 20th of July.

Q. And after you came down here, shortly after you came down, did your eyes trouble you so that you had to go to a specialist here?

A. Yes sir.

Q. Who did you go to?
A. I went to Dr. Dowling.
Q. Dr. Dowling?
A. Yes.
Q. In the Cobb Building?
A. In the Cobb Building.
Q. And he examined you?
A. Yes sir, he examined me. Thomas Dowling.
Q. Had you had any trouble with your eyes at all before this time when you were hurt?
A. No sir, I had never had any trouble.
Q. He provided you with the spectacles?
64 A. Yes sir.
Q. What effect have the spectacles had on your eyes, as to helping you, or otherwise?
A. Well, they help a little, but if I don't use them I get*ting* worse—my eyes getting worse.
Q. How is it when using them? Where you haven't used them, can you use your eyes as you used to?
A. No.
Q. If your eyesight is as good?
A. No sir, I can't use my eyes as I used to.
Q. What seems to be the matter with your eyesight now?
A. Well, when I start to read I can't read anything, they start to pain and it pains all the time, and I can't see as good as I done before, especially b ylight, I can't see hardly anything, I can't read at all.
Q. Now, after you first came down here, after the 18th of July, how was your condition?
A. The condition was awful bad.
Q. In what regard?
A. Well, I was burned. My stomach was awful bad inside, and the eyes and everything.
Q. Well, what was it particularly about your internal trouble, what internal troubles did you have?
A. Well, I had trouble in my stomach. My stomach flamed up.
Q. It had got flamed up with fire?
A. Yes sir.
Q. Did you have any trouble with your stomach before——
A. No sir.
Q. —like you did afterwards?
65 A. No sir.
Q. What was the trouble? Can't you tell the jury what was the trouble with your stomach? Can't you tell them what you were suffering? What was the matter with it?
A. Well, the matter—I can't eat anything, I can't eat anything except eggs and milk and a little fish, a little vegetable. I can't eat any meat at all. If I eat any meat, I get sick right away. Sometimes I spit blood, especially in the mornings I spit blood, come from the stomach.

Q. Now, if you do eat anything like meat or anything, what is the result on you, even now?

A. I get sick right after I eat it. I couldn't touch any meat. It comes right up, some of it, and some of it seems to stay right up in the throat, and afterwards I notice lots of times I spit blood if I eat any meat.

Q. What about any pains following when you eat?

A. Yes, pains right across there all the time.

Q. Right across your stomach?

A. Yes.

Q. Affect your heart any?

A. Yes, and pains right inside of my heart—the back of my heart awful pain all the time.

Q. How is it in regard to your being able to eat anything at all when you first came—first had the injury?

A. I was not able to eat anything at all then.

Q. How long a time, about, was it, that you could not eat anything?

A. Oh, it was for two or three months before I could eat any—hardly anything.

66 Q. Just eat enough to keep alive?

A. Just a little to keep alive, that is all, and I got so weak I thought—well, I couldn't stand it any longer.

Q. When you came down here, did you try to go to work?

A. Yes, I tried to go to work.

Q. How long after you came?

A. Oh, about a week after I came down.

Q. And what was the result?

A. Of course, I couldn't stand it. I was so weak, pains in my stomach, got so sick I couldn't do any work, and I couldn't lift anything with my hands, and so I had to quit it.

Q. Had to quit it. Did you see any doctor about it?

A. Yes, I went up to doctor.

Q. Who was the doctor you went to first?

A. I went to Dr. Torland.

Q. In the Cobb Building?

A. Yes, in the Cobb Building.

Q. Now, did you explain to him the troubles that you had, and so forth?

A. Yes, I explained to him.

Q. About your stomach?

A. About my stomach and the condition I was in.

Q. Did he treat you there for a while?

A. Yes, he treat me there for a while, about two weeks, I guess, two or three weeks, and he couldn't do any——

Q. Gave you medicine and so forth?

A. Yes, he gave me medicine.

Q. What did he recommend you to do?

A. Well, he recommended me to go to—he sent me to this

67 specialist.

Q. What is his name?

A. That is Dr. Leede.
Q. Dr. Leede?
A. Leede.
Q. You went to Dr. Leede as he told you to?
A. Yes sir, I went to him.
Q. For how long a time did he attend you?
A. Oh, about——
Q. How many visits?
A. I was there about three times to him. He treat me about ten days.
Q. About ten days. What was the result?
A. I didn't get any better, so I——
Q. You didn't get any better?
A. No, I got worse.
Q. Yes. What did you do then?
A. I went to Dr. Edward Fiek.
Q. Is he another specialist in this town?
A. Yes, he is a stomach specialist.
Q. What did he do with you?
A. Well, he—I told him the condition, and he sent me up to the hospital right away, the same day.
Q. What hospital?
A. It is a sanitarium, on Bellevue Avenue.
Q. On Bellevue Avenue?
A. Yes sir.
Q. And how long did he keep you there?
A. He kept me there for three weeks.
Q. And how often did he attend you during that three
68 weeks?
A. He was in there every day.
Q. What was your hospital bill?
A. My hospital bill was $75.
Q. And you paid it?
A. Yes sir, I paid it.
Q. What was the bill of Dr. Dowling, the eye specialist?
A. That was——
Q. For treating you and for glasses?
A. It was $18.
Q. You paid that?
A. Yes sir.
Q. That is your receipt?
A. Yes sir, that is the receipt. I paid that.
Q. What was the bill of Dr. Leede?
A. That was $17.50.
Q. $17.50. Have you paid that?
A. Yes sir, I have paid that.
Q. Oh, you have paid that?
A. No sir, I haven't paid that.
Q. That is what I thought?
A. No.

Q. Did you pay the bill of Dr. Fick?
A. Yes sir.
Q. For his treatment of you during——
A. Yes sir.
Q. Now, after you came away from the hospital and you went home, state what your condition was?
A. I was just as bad as when I was in the hospital. I was in bed for three months afterwards.
Q. For three months afterwards you were in bed?
69 A. Yes sir.
Q. Did you have to be in bed?
A. Yes sir.
Q. And Dr. Fick treated you during all that time you were home during the three months?
A. Yes sir.
Q. What was his bill?
A. That was $62.50.
Q. And you paid that?
A. Yes sir, I paid that.
Q. And this is the receipt?
A. Yes, that is the receipt for it.
Q. Do you know where Dr. Fick is now?
A. He is over in France.
Q. Did you know before he left, that he was going to leave?
A. No, I didn't know before he left. I knew it about ten days after he left.
Q. Ten days after he left. He is in the military service, in France?
A. Yes, he is in the military service.
Q. How much have you paid Dr. Torland for his attendance?
A. I paid him each time I was up there. I think $25, I guess.
Q. You think it is about $25 you paid him?
A. Yes.
Q. And have you paid out any money during this time for medicine that you had to take, prescribed for you?
A. Yes sir, I have paid out.
Q. About how much?
A. About $30, I guess.

70 Mr. McCord. That is admitted.
Mr. Aretander: That is so. I will withdraw that.

(Mr. Aretander:)

Q. When you were up at Cordova, after you came out of the hospital, were you able to do any work whatever?
A. No sir, I was not able to do any work.
Q. The company——
A. The company——
Q. —put you to doing something?
A. Put me to watch the gate for the cannery there.

Q. Watch the gate?
A. Yes sir.
Q. Which is just to stand there and look?
A. Yes, stand there and look, and I had my bandage still on my hands, they were not more than half healed up, I couldn't hold a fork or knife or anything when I was eating.
Q. What?
A. I say I couldn't eat anything with my hands—anything—because the bandage was on, and I was weak, you know.
Q. That was all you did while you were up there?
A. Yes, that is all.
Q. After you came down here, how long a time after you came down until you commenced to earn anything?
A. Oh, about a year.
Q. About a year?
A. Yes sir.
Q. You commenced to work? When did you first commence to work?
A. Two months and a half, I guess.
71 Q. Two months and a half ago?
A. Yes.
Q. About the 15th of June?
A. Yes.
Q. Where did you then commence to work?
A. I commenced to work down at Nilson & Kelez's shipyard

(Mr. McCord:)

Q. Where?
A. Nilson & Kelez's shipyard.

(Mr. Aretander:)

Q. Nilson & Kelez's shipyard?
A. Yes sir.
Q. And have you kept on working in the shipyard since, with the exception of the time you have been laid up? We will come to that afterwards.
A. Yes, but I have not worked—I worked there for a few days and then I got sick and then I laid off for two weeks.
Q. For two weeks, after you had started in?
A. Yes. Then I went to work and pretty near every week I had to lay off.
Q. How many times, how many days did you lay off at a time when you had to lay off?
A. Oh, I guess it must be about a month.
Q. A month altogether that you laid off?
A. Yes sir.
Q. During those two months and a half since you started to work?
A. Yes.
Q. How?
A. Yes sir, about that.

Q. Now, when you laid off this time was because you
72 haven't wanted to work, or why?

A. No, it is because I am sick, I can't work.

Q. You could not work?

A. Yes.

Q. And when you took work there, what work did you get?

A. Well, I got the work, I am helping around the band saw, where they saw the frames for the boats.

Q. Why didn't you get any better work?

A. Because I can't stand it. You see that is kind of easy work.

Q. Kind of easy work and easy pay, I suppose?

A. Yes, small pay, smallest pay there is in the yard.

Q. How much?

A. $4 a day.

Q. Have you had any trouble with nervousness since you were hurt? No. I will waive that question. So that there is about twelve months since you came down from Alaska that you haven't been able to earn a penny?

A. Yes sir.

Q. On account of this trouble?

A. Yes sir.

Q. Up to the present time?

A. Yes sir.

Q. Now, did the company pay you something for the time that you were there and until you left?

A. Yes, they paid me. I got $250 in a check up there, before I left.

Q. Yes. And you had got some money up there before, hadn't you?

A. I got about $30.

73 Q. Then it is $280 they paid you up there?

A. Yes sir.

Q. And after you came down and while you were sick, did your wife get some more money from them?

A. Yes sir, when I was——

Q. On account of your wages?

A. Yes, when I was laying up at the hospital my wife was down to get the rest of it and she got $125.

Q. So that the company paid you, altogether, $405 for wages from the 7th of February?

A. Yes.

Q. Up until the time you quit?

A. Yes sir.

Q. They paid your hospital and doctor bills up in Cordova?

A. Yes sir, they did.

Q. But they haven't paid any of your other doctor bills?

A. No sir.

Q. Or any other wages?

A. No, no.

Q. Except what you have mentioned.

(An adjournment was here taken until 9:30 o'clock tomorrow morning.)

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OLE SANDANGER, the plaintiff, resumed the stand.

(Mr. Arctander:)

Q. What was the position of the stove with reference to the wall, as to whether any part of it came close up to the wall of the boat?
A. Yes, the bottom, the lower part of the stove was close up to the wall, and the upper was a few inches away from the wall.
Q. The wall receded?
A. The wall was going down like this.
Q. On the wall back of the stove what was there?
A. There was a tin plate put on the back of the stove on the wall.
Q. Nailed down?
A. Nailed onto the wall.
Q. When I offered this last night, you hadn't marked on "A" the word "Bunk" where you said the bunk was. You have done that since, have you?
A. Yes.
Q. And that represents it correctly?
A. Yes.
Q. I forgot to ask you, also, last night, about whether or not you had noticed any difference since that accident in regard to the condition of your nerves?
A. Yes sir, I have been nervous all after that explosion and I am nervous yet, and I can feel it——
Q. How does that exhibit itself?
A. Well, I shake, and when I work a little I shake awful bad.
Q. Your whole body shakes?
A. My whole body shakes, and even when I am laying in the bed I am shaking, and start and sweat sometimes too.
Q. Do you know anything about the actions of your heart since that time when you are nervous?
A. Yes sir, the heart sick; sometimes, if I much work it starts to beat, I have to sit down for five or ten minutes, and it don't seem to work right. Lots of times when I am laying in the bed it starts to beat, too.
Q. I will ask you whether or not there was any fire at all in that stove during that morning until luncheon was prepared there?
A. No sir, there was no fire.
Q. No fire at all in the stove?
A. No fire at all.
Q. How long a time, approximately, did it take to prepare the lunch, from the time the fire was started until the lunch was removed upstairs?
A. From fifteen to twenty minutes, not over twenty minutes.

Q. Not over twenty minutes. Now, what amount was there of ashes, sand and gravel in the bottom of the stove at the time you came to make the fire?

A. Well——

Q. As near as you can tell?

A. About inch and a half, probably two inches, but not over.

Q. You are sure not over two inches?

A. Yes, not over, because I was right down in the bottom with my hand.

Q. With your hand you got right down to the bottom of
76 the stove?

A. Yes.

Q. And the two inches would cover everything, ashes, sand and gravel, or everything that was in the bottom?

A. Yes sir.

Q. I wish, while it is a little lighter than it was yesterday, that you would step up here before the jury and show them your scars on your face, your hands, the way your hands are.

A. (Witness showing.)

Q. Show the jury your nose.

A. (Witness showing.) I haven't any feeling in my nose, either.

Q. You haven't any feeling. Where is it, on the left ear?

A. The left ear. (Showing.)

Q. The front of the ear?

A. Yes.

Q. No scars left on the other ear, on the right ear?

A. No. (Showing.)

The Court: Speak a little louder so that the stenographer can get what you say. The stenographer should take down what you say to the jury.

A. The skin was all off and the meat was burned off, right down on the bottom, right where it is flame; meat was burned out all over, and there was only a little skin here left, there was a little bit of skin left inside, in the palm. The finger nail was burned off all around.

Q. You told them that. Only wanted them to see it. You have told the jury the condition of your face and ears—your scars.
77 A. (Witness showing to the jury.)

Q. Now, take the stand. You spoke yesterday of—I asked you whether a certain receipt which I showed was the receipt from Dr. Dowling, the oculist. I have had it marked plaintiff's exhibit "C" for identification. Is that the receipt? (Handing paper to witness.)

A. Yes sir, that is the receipt.

Q. From Dr. Dowling?

A. Yes.

Q. And showing you exhibit "D," receipt from Dr. Fick, is that the one that I showed you that you said was the receipt that you paid Dr. Fick?

A. Yes sir, that is the one.

Q. You paid both of those doctors the amounts stated in those receipts?
A. Yes sir.

Mr. Arctander: Is there any objection to the offer of them?
Mr. McCord: Not at all.
Mr. Arctander: We will offer them in evidence.
The Court: Admitted.

Receipts referred to were marked, respectively, Plaintiff's Exhibits "C" and "D."

(Mr. Arctander:)

Q. You said the hospital you paid $75?
A. Yes, I paid $75.
Q. Have you that receipt?
A. No, I lost the receipt.
Q. You lost the receipt?
A. Yes sir, I lost it.

Mr. McCord: Who was that to, the other seventy-five?
Mr. Arctander: The hospital.

(Mr. Arctander:)

Q. Where did you state that the hospital was?
A. It is on Boylston Avenue.
Q. Boylston Avenue?
A. Yes.
Q. You stated Boylston and you stated Bellevue.
A. I stated Bellevue, but I was mistaken; it was Boylston.
Q. A private sanitarium up there?
A. Yes, it is a sanitarium, private house.
Q. Do you know whether it is there now?
A. Yes, it is there now, but there has another lady got it now.
Q. Another lady is running it?
A. Yes.
Q. You paid that bill, anyhow, $75?
A. Yes, I paid it.

Cross-examination.

(Mr. McCord:)

Q. Mr. Sandanger, how long have you been engaged in the fishing business, did you say, in Alaska?
A. About seven years.
Q. Before you were injured. And you knew how to operate boats, did you?
A. Yes.
Q. And been working on tugs and small launches that were engaged in the fishing business, for the whole seven years, have you?
A. Yes sir.

79 Q. You knew how to operate the engines, didn't you, run the boat?

A. Oh, yes, I know how to operate them.

Q. You are an experienced fisherman and steamboat man for boats of that size, are you?

A. Yes.

Q. And during all of the time that you had been in Alaska, you say it was the custom for you to start your fires with kerosene oil?

A. Yes sir.

Q. On all boats?

A. On all the fishing boats.

Q. Whether operated by you or anybody else?

A. Yes.

Q. That is the universal custom, you say, throughout Alaska, is it?

A. Yes sir.

Q. Now, you knew at the time that it was contrary to the regulations of the government to use kerosene in starting the fire, didn't you?

A. I don't know anything about that.

Q. You don't know anything about that?

A. No sir.

Q. You knew that if you had dry wood you could have started it, couldn't you?

A. Yes, I could if I could have dry wood.

Q. On the morning in question when you were injured, if these egg boxes were dry you could have taken the hatchet and split them up and started it without using the kerosene, couldn't you?

80 A. Yes, if they was dry, but they wasn't dry.

Q. These egg boxes are all kiln dried lumber, are they not originally, before they are made, they are run through the dry kiln?

A. Yes, but they lay outside there when it comes in the cannery.

Q. Those are not green lumber, I mean?

A. It is thin.

Q. What?

A. That is thin boxes.

Q. I understand that, but it is wood?

A. That is wood, yes.

Q. I say the wood was all kiln dried, wasn't it?

A. No, it was not dry we had aboard the boat.

Q. I understand it was wet, but I mean it had no sap in it, it was not green wood at all?

A. Well, it was all wet. I don't know what kind of wood it was.

Q. I say it was kiln dried lumber. Have you ever started any fires without kerosene? I believe you said you hadn't?

A. No, I always used kerosene.

Q. Always?

A. Because we were going in fishing boat and you can't keep wood dry.

Q. As a matter of fact, you use it because it is so much quicker, don't you?

A. Yes, that is the only way you can start fire.

Q. And whether it was dry or whether it was not, you would still use kerosene, because it was more convenient, just as you do in your own home, naturally, wouldn't you?
A. Yes, I——

(Mr. Aretander:)

Q. Whether it was dry or not?
A. No, if it was dry——

Mr. Aretander: Pay attention to what he asks you.
Mr. McCord: I would be very much obliged if you would keep quiet.
Mr. Aretander: Is that so? Well, I am not going to let you get an advantage——
Mr. McCord: While I am interrogating the witness, I would like for you to keep quiet.

Q. When you set out on the morning of this accident, I want you to tell me where you went to?
A. We went out Buswell Bay.
Q. How far is Buswell Bay from this Cordova cannery?
A. Oh, I don't know exactly how far, but it must be about close to about twenty miles anyhow.
Q. About twenty miles?
A. I guess so.
Q. And you left at eight o'clock in the morning?
A. Left 7 o'clock in the morning.
Q. And you went to Buswell Bay and took on a load of sand, did you?
A. Yes, took forty sacks of sand, or half sacks.
Q. You took on a load of sand at the entrance of the Bay, didn't you?
A. Yes.

Q. And after reaching Buswell Bay, before taking on the sand you went up inside of the Bay a distance of a mile or two further, didn't you?

A. No, sir, we didn't.
Q. You didn't do that?
A. No.
Q. Where were you, or at what point were you when you had lunch, do you know?
A. I don't know exactly the name of the points, but——
Q. You don't know the name of the point. Now, where did you go off on this duck-shooting expedition?
A. We were about twelve miles from the mouth of the Bay.
Q. The mouth of the Bay, Buswell Bay?
A. You mean when we had the lunch——
Q. I say, when you went out to shoot these ducks—you say you started to shoot ducks for an hour and a half or two hours?
A. Yes, it was——
Q. Where were you when you did that?

A. Well, it was running along the beach there.
Q. What beach, on what island?
A. That is on Hawkins Island.
Q. On what?
A. The Bay is on Hawkins—on Hinchinbrook Island.
Q. That is where you were shooting ducks?
A. No, but the bay is there.
Q. I am asking you where you were shooting the ducks, where were you when you spent these two hours shooting ducks?
A. We were running along Hawkins Island, I guess.
Q. Did you go out of your course——
A. I don't know as that is the name of that.

83 Q. Did you go out of your regular course from Burroughs Bay to Cordova, in order to shoot these ducks?
A. Yes, we ran along the beach——
Q. You went where, Burroughs Bay? That is the place you went, wasn't it? What is the name of that Bay, give it again?
A. Buswell Bay.
Q. Buswell Bay. Now, between Buswell Bay and Cordova it was practically a straight course, was it not?
A. No, sir, it is not a straight course.
Q. Where did you go out of the course, in order to shoot these ducks?
A. Well, we ran along the beach.
Q. What beach?
A. Along the—along shore.
Q. You know whether it was out of your regular course, or wasn't I say, was it out of your regular course, or was it on your course?
A. Yes, it was out of the course.
Q. You went out of your course. You went off in which direction from the regular course, north or south, east or west?
A. Well, I didn't look on the compass.
Q. Well, how far was it?
A. I guess it would be about two points off the course anyhow, two or three points.
Q. How far off of your course?

(Mr. Aretander:)

Q. About what, what did you say?
(Answer read.)

(Mr. McCord:)

Q. How many miles away from your regular course did
84 you go?
A. Well, we go about ten or twelve miles.
Q. Ten or twelve miles off of your course to do this shooting?
A. From the time we left the bay.
Q. From your regular course, you diverged off ten or twelve miles from your regular course, is that it? Look at me now, not at your counsel.

A. Yes, I guess. I didn't look on the compass.

Q. You think it was about ten or twelve miles?

A. Well, maybe on the straight from the bay. We maybe was on the course for a little while, but——

Q. But you were off of your course and wasted about two or three hours—an hour and a half or two hours, in this duck shooting, did you?

A. Yes sir, an hour and a half or two hours.

Q. Now, this boat that you speak of, that you were on on that day, could run about six miles an hour, couldn't it?

A. Yes, about six miles an hour.

Q. That would be about the maximum speed, would it not?

A. Yes, think so; from five to six miles.

Q. This boat—the deck of the boat was only about six inches above the water, wasn't it?

A. Oh, it was more than that.

Q. How much above the water?

A. It was about two feet above.

Q. About two feet above the water?

A. Two feet and a half above the water.

Q. How deep was the boat, then, down to the bottom of the boat, down to the bottom——

85 A. I could stand straight—when I was in the cabin, I could stand straight in the cabin.

Q. The cabin, a part of it was down and then a house built on the deck; about six feet in the cabin, wasn't it?

A. The cabin?

Q. Yes, from the top of the cabin to the bottom, to the floor, about six feet, wasn't it?

A. No, it wasn't six feet

Q. How much was it?

A. About five feet, or five feet six inches.

Q. You could stand up very readily in it, couldn't you?

A. Yes, I could stand up—not in the back of the cabin—the front of the cabin I could stand straight, but not in the back.

Q. But you had to go up from the floor to get on the deck two and a half feet, then, didn't you—from the floor of the cabin to the top of the deck, when you would go up the steps to get on the deck it was about two and a half feet, wasn't it, up there?

A. Yes, it was about two and a half feet.

Q. About two and a half feet there.

A. I didn't measure it, I don't know exactly.

Q. You spoke yesterday of these life preservers. Where did you look for the life preservers?

A. I looked for the life preservers in the bunks and up top bunk and in the lower bunk and all over.

Q. The bunks are in the cabin, aren't they?

A. Yes, the bunks are in the cabin.

Q. And with all this fire in the cabin after the explosion took place, and you burned, you state that you came out with the

86 flame, and you looked in there and saw the bunks to ascertain if there were any life preservers there?

A. I looked when I came up from water again and into the cabin.

Q. What?

A. I looked when I came up from the water and into the cabin again, after I got hurt.

Q. At the time of the explosion and when you were burned, when the cabin was filled with flames, did you look in the bunks for life preservers?

A. I couldn't look anywhere——

Q. Did you do it? Not what you might have done or what you could have done. Did you do it?

A. Well, I tried to look over and I couldn't see anything.

Q. All in flames and you could not have then—you didn't try to find life preservers?

A. Yes, I tried to, but I couldn't see anything.

Q. You tried to find life preservers while you were still in flames?

A. Yes sir.

Q. In other words, you would have the jury believe that you stayed there in these flames instead of getting out, and you searched in the lower and upper bunk to ascertain if there were any life preservers there; is that right?

A. No sir, I didn't stay there. But—I didn't stay there in the flame and look for life preservers, no sir, I didn't.

Q. So you didn't look for the life preservers until after you had come back from your submergement in the water?

A. Well, I had it in my mind and I ran up and I looked
87 for them.

Q. Where did you look?

A. I looked on top of the cabin when I came up.

Q. When you came up you looked on top of the cabin. Are life preservers carried on top of the cabin?

A. That is the place they were supposed to be.

Q. Don't you usually carry them under the bunks in all steamboats?

A. No sir, they are not supposed to be in below.

Q. In steamboats it is universal to carry them——

A. Well, usually carry some in the steamboats.

Q. In all steamboats isn't it the universal custom to carry life preservers under each one of the bunks?

A. No sir.

Q. Then why did you—while you were still in the cabin and while you were looking for the life preservers, why did you look in the upper and lower berths to find them?

A. After I came aboard——

Q. Before you came aboard. You said you looked for life preservers while you were still in the cabin, after the explosion, as I understood it. If I am wrong, correct me.

Mr. Arctander: The witness didn't state any such thing.

(Mr. McCord:)

Q. If I am wrong, correct me. Why did you look in the bunks to find the life preservers, if it was not the custom to carry them there? Answer the question.

A. I looked after I came aboard, I looked if there was any life preservers and I couldn't see any life preservers.

Q. Mr. Sandanger, when this explosion took place and you rushed on deck, you still looked on top of the cabin, while
88 you were burning, to ascertain if there were any life preservers there, so that you could put one on, didn't you?

A. Yes.

Q. And with all the flames on you, you were going to still put a life preserver on, in order to jump in the bay, were you?

A. Yes, I looked for life preservers when I came up, and there was no chance——

Q. And your clothes were all aflame, and your face was burned and your hair—your hat, cap was burning, and you stopped to look for life preservers before you jumped over?

A. Yes sir.

Q. When you got on the deck, didn't Mr. Stensland and, the other boys tell you to jump overboard?

A. No sir, there was nobody told me to jump overboard.

Q. And it was only two feet; you were an experienced swimmer, weren't you?

A. Yes, if I wasn't an experienced swimmer, I suppose I would not be sitting here.

Q. You were a good swimmer and you want this jury to believe that you stood on the deck, looked around on top of the cabin to find life preservers to put one on, in your burning condition, rather than step overboard there two feet and a half to the water; is that right?

A. Yes sir, I looked for life preservers before I jumped overboard.

Q. The very moment you got on the deck after the fire they pushed you right overboard, didn't they?

89 A. No sir.

Q. Told you to go right over quickly, that it was your only chance?

A. No sir.

Q. Nobody did?

A. No sir.

Q. These three other men you would have us believe stood there on the deck and didn't assist you at all?

A. No sir, they didn't push me overboard at all.

Q. Didn't help you to get off the boat?

A. No.

Q. Didn't tell you anything about it?

A. No sir, there was nobody said anything.

Q. But the very moment you did jump over, then they pushed a plank off the boat for you to hold onto until they could pick you up, didn't they?

A. Well, they pushed a plank overboard, yes.

Q. Pushed it off in front of you, didn't they? You only had to swim a few feet?

A. I swam about 40 feet before I reached the plank.

Q. You were able, then, to swim, were you?

A. Sure.

Q. I say, you were in a condition where you could swim then?

A. Well, I came to—when I came in the water I came to so that I could swim.

Q. How long after you came on the deck did you spend in looking for these life preservers before you jumped overboard?

A. A few seconds.

90 Q. Then you rushed and jumped overboard?

A. Yes, I jumped over, for I knew it was the only chance, because I thought everything was gone, anyhow.

Q. You were not afraid to jump into the water when you could swim, were you?

A. I would not jump in the water if there was—because cold water. I would be afraid, if I was not burned and didn't have——

Q. You stopped to consider all that at that time, I suppose, did you?

A. I had to that time.

Q. I say you stopped and considered the danger of trying to swim in your condition, did you?

A. Yes sir, that is the only chance I have, and I can't find anything to hold onto, I took my chance on my life and jumped overboard and jumped over.

Q. And none of these men made a suggestion to you, didn't tell you what to do or anything about it?

A. No sir, not that I know.

Q. They paid no attention to you, but let you go?

A. I didn't see anybody pay any attention at all.

Q. Mr. Jorgenson and Mr. Utness were friends of yours, weren't they, and Mr. Stensland?

A. Yes, they were friends.

Q. And they stood by and didn't try to assist you or advise you or do anything?

A. Well, they couldn't do anything. I was burning, the flames was all over; they couldn't do nothing.

Q. When you came out of the cabin, was the cabin still full of flame when you came out, as you came up the steps of

91 the cabin to the deck?

A. Well, there was flames when I jumped overboard, there was flames all over the cabin.

Q. All over the cabin at that time. And how long had it been between the explosion and the time that you jumped overboard, about how many seconds? A half a minute?

A. I don't know exactly how much, because I was in no condition, I couldn't know.

Q. When the explosion took place you were thrown over and rendered unconscious?

A. Yes sir.

Q. And then afterwards got up, looked in the bunks to see if you could find life preservers, then came up the steps?

Mr. Arctander: He didn't say that. The witness has not said anything of that kind.

Mr. McCord: It is for the jury to determine, not you.

Mr. Arctander: No. I object, and I will preserve my rights if I can.

Mr. McCord: I object to counsel——

The Court: One moment.

Mr. McCord: If you want to make any charges of misconduct, I will give you plenty of chance.

The Court: One moment. Let Mr. McCord cross examine the witness.

Mr. McCord: And stop interrupting.

The Court: You object to the question and I will rule on it when you object to the question properly.

(Mr. McCord:)

Q. How much time was consumed before you jumped overboard, after the explosion?

92 A. I don't know how many seconds.

Q. Well, was it a half a minute, was it a minute?

A. Well, I guess about a minute, I guess; I don't know—I can't—I don't know how long it was. When I came up, then I was looking for the——

Q. When you jumped overboard, they pulled the boat back and lifted you on board, didn't they, the other people, the men on the boat, they rescued you, took you out of the water?

A. Yes, when I swam to the boat, yes.

Q. They dropped the boat back and picked you up?

A. No, they could not bring the boat back, because the boat was running full speed and it was going about 300 feet ahead of me, and then the engine stopped and the boat was laying there, they had nothing to pull with and nothing to help themselves with, no skiff or boat or nothing, so I had to swim right to the boat. I was in the water ten minutes.

Q. Did you get a plank?

A. Yes, but there was a little time before I got the plank.

Q. They pulled the boat back, didn't they, afterwards?

A. But they didn't have nothing—they had only—they had—there was broom, but that is all they had to paddle with. The engine stopped—about 28 feet—you can't pull anything with a broom.

Q. The engine had stopped?

A. Yes sir, had completely stopped.

Q. The engine stopped and you had to swim up to it?

A. Yes sir.

Q. Then they helped you on the boat and then what did
93 they do, took off your clothes, did they, part of them, put on dry clothes.

A. Yes. I didn't have any clothes left.

Q. What?

A. I didn't have any clothes left.

Q. They gave you dry clothes to put on, didn't they?

A. Yes. I got some from Isaac Utness, I got overall, he had overall over his pants, I got that and I got shirt from somebody else, I don't know who it was.

Q. And they took you on to the cannery, and as soon as you reached the cannery they took you up to the hospital, didn't they?

A. No sir, didn't go to the cannery.

Q. Didn't go to the cannery. Where did you go to, where did you land?

A. We went to Cordova.

Q. Went to Cordova?

A. Yes.

Q. And landed at the dock and then walked on up to the hospital, didn't they?

A. Yes.

Q. I believe you stated that the defendant in this case, the Carlisle Packing Company, furnished you medical attendance, hospital attendance, they paid your hospital bills?

A. Yes sir.

Q. Furnished a doctor and nurse, didn't they?

A. Up to Cordova, yes.

Q. They paid all of those bills, did they?

A. What is that?

94 Q. I say, the company, the defendant, paid the hospital and doctor's expense at Cordova?

A. Yes, they did.

Q. You were in the hospital about a month?

A. About a month.

Q. And after you got out, they gave you a job at the cannery, did they?

A. Yes, they——

Q. You were watchman?

A. Watchman, watched gate, yes.

Q. And how long did you occupy that position?

A. That is what I had at the time I was in the cannery, when I left.

Q. You were injured on the 7th of March, and you were about thirty days in the hospital, which would bring you out of the hospital about the 7th of April, and you remained——

A. Yes sir.

Q. —as watchman up there from the 7th of April until you quit, when?

A. That was in July.

Q. Quit in July. So you worked as watchman at the cannery, or attended to the duties of watchman——

A. Well, I was in the cannery for about two weeks before I started to watch the gate, but I was able to walk around then and then I watched the gate for——

Q. About three or four months—three months, wasn't it? Well, from April until July. When did you quit in July?

A. July.

Q. That is the time the canning season was over, was it?

95 Did you quit before the canning season——

A. I quit—they had quit on the red salmon.

Q. You finished when they had finished canning red salmon?

A. Yes sir.

Q. A great many others quit at the same time and came down with you, though?

A. I don't know anything about that.

Q. You do know who came down with you on the boat?

A. There was nobody came down with me.

Q. Were you the only man that left the employ of the company in July when you started for Seattle?

A. I was the only man that was aboard that boat I came down on.

Q. None of the other men quit?

A. That I know. I didn't know anybody.

Q. You don't know anything about that?

A. No sir.

Q. Was your wife with you at that time?

A. Yes, my wife was there.

Q. She came up after you were hurt, didn't she?

A. Yes.

Q. What time did she get there? You were injured on the 7th of March. What time did she get there?

A. Well, she came there about—I was up when she came up: I guess I been up—exactly—I don't know exactly how long.

Q. Where did you live while you were working at the cannery, after you came out of the hospital, did you and your wife live in a house, keep house?

A. We had a house up town.

96 Q. That was not one of the company's houses?

A. No sir, they didn't furnish houses.

Q. And they paid you your regular wages of a hundred dollars a month, did they, during the time you were working there from the 7th of March on until July when you quit?

A. I don't know how much they paid, but they paid me——

Q. You do know how much you were earning, don't you?

A. Paid me $405.

Q. How much were you getting, what were your wages?

A. Well, I was supposed to have $60 a month before they started the fishing season, and when we——

Q. $60 and your board?

A. $60 and my board, and when we started the fishing season I should have the average for the amount that they catch each day, what other fishermen done.

Q. And in that way you received about $405 from the company. Then you came to Seattle. How much work did you do in Seattle, and where did you work?

A. I worked down—I was trying to work two or three times, but had to quit——

Q. I say where did you work?

A. I went out to fish on the Sound—salmon.

Q. What?

A. I say went out and worked fishing salmon on the Sound.

Q. For whom were you working down on the Sound, who did you work for, who did you start to work for?

A. There was—for a fellow over in Tacoma.

Q. Well, who was he?

A. I don't remember his name. It was only that two days and I quit.

97 Q. You don't know who he was. How much did he pay you for your two days' work?

A. Didn't pay me anything. We didn't make anything.

Q. You were not supposed to get anything unless you caught the fish?

A. No.

Q. You were working on a contingent fee, then, were you—contingent wages?

A. Yes.

Q. Then what other place did you work at?

A. Well, I was trying to work on shipyard.

Q. I am talking about July, right after you returned in July, 1917. You worked over at Tacoma, you say, a couple of days. Where was the next place you worked and when was it?

A. Well, I should work down in the shipyard. I worked only a couple or three hours then I——

Q. Where was it, whose shipyard?

A. It was down at Nilson's.

Q. Nilson's shipyard?

A. Yes.

Q. And you only spent two or three hours there?

A. Yes, and then I had to quit because I couldn't do any——

Q. Never mind about why you quit. I am asking how much time you put in. Then where did you work next, or try to work next?

A. Down at Nilson's, something else.

Q. Something else. And have you worked anywhere else except Nilson's?

A. No sir.

98 Q. And your burns had healed up when you left the cannery, hadn't they?

A. It took about three months before they healed up.

Q. When you came down to Seattle, all of the wounds had been healed, had they?

A. Well, there was—on this hand was quite healed, but it opened up once in a while, they opened up and wasn't quite healed up, but——

Q. Took some little time to heal?

A. Yes, the skin was thin, you know, cracked.

Q. Finally healed up. You say you went to Dr. Dowling, a specialist here, for what trouble?
A. For my eyes.
Q. For your eyes. You can read with your glasses, can't you?
A. Well, I can read, but not much. If I read for ten or fifteen minutes——
Q. Your eyes grow tired, do they?
A. Yes, they — wide open, but I can't see.
Q. Your eyes were burned on the outside, the eyeballs were not burned, were they, not injured?
A. Well, there was about——
Q. Just the eyebrows burned off, weren't they?
A. The whole skin was burned right inside of eyes.
Q. But on the left side of your face there were no burns at all, were there, and on your left eye there was none?
A. It had burned my skin up all here too, but——
Q. No scars there?
A. No scars.
Q. Cured you without leaving any scars?
A. No.
Q. And then when did you finally go to work—you said you worked about two and a half months, losing probably a month's time. When was that?
A. That was down at Nilson's.
Q. I say when?
A. That is in June I started there.
Q. In June of this year?
A. Yes.
Q. And you are working there now, are you, before you came to your trial?
A. Yes. Well, I haven't been working now for a week.
Q. For a week, but prior to that time you were working there, were you?
A. I was employed there, yes.
Q. And earning $4 a day, were you?
A. Yes, I was earning $4 a day.
Q. And what did you say you were doing?
A. I was helping around the bandsaw.
Q. And you have put in about a month and a half's time out of two months and a half; is that right?
A. Yes, about that.
Q. Now, you don't suffer any pain from your hands and face now, do you?
A. Yes, I did.
Q. Perfectly healed up. Do you still suffer pain?
A. Sometimes it breaks out, them scars breaks out.
Q. But you only suffer when it breaks out?
A. Yes; I can feel them pains.
Q. Naturally you feel pain.
A. And pain *it* all the time.

100 Q. Yes. You can feel the pain, but you don't have any acute pains until there is an abrasion, it breaks out in some way; that is right?
A. Yes, I have pain all the time.
Q. What?
A. Yes, I can feel it all the time.
Q. And you were burned on your thigh too, were you?
A. Yes.
Q. That is all healed up?
A. The skin on it, yes.
Q. You don't have any difficulty in walking, do you?
A. Well, sometimes the leg get awful tired, and I can feel it always pains.
Q. And you claim you can't eat anything—you don't eat meat?
A. No sir, I can't touch meat.
Q. Eat fish, do you?
A. Yes, I can eat a little fish.
Q. Bread?
A. Well, a little bread. I can't eat the rye bread.
Q. How does your weight now compare with what it was before the injury?
A. Well, now I guess I am a hundred and eighty pounds or 75 or 80. I haven't weighed——
Q. You weigh 175 or 80 now?
A. Yes.
Q. How much did you weigh at the time of the injury?
A. That was 198, 203 pounds.
Q. How tall are you?
A. I am five feet, about seven inches, I think.
101 Q. And you weighed before the injury 200 pounds, approximately, 190 to 200 pounds, so that you have not lost any particular weight since your accident?
A. Yes sir, I have.
Q. You have lost the difference between 185 and 198 pounds?
A. Not 185.
Q. I thought you said you were 185?
A. No sir, I said 175 or——
Q. Or 80?
A. Or 80.
Q. I thought you said 85. Now, you say you have some trouble with your throat?
A. Yes.
Q. Have you consulted any throat specialists for the purpose of finding out what your throat trouble was?
A. Yes, I was——
Q. Who?
A. Well, I was up——
Q. Who did you consult?
A. Well, Dr. Dowling.
Q. Dowling?
A. Yes.

Q. Where is he now?
A. He is up in Cobb Building.
Q. He treated you for your throat?
A. Well, he didn't treat me very much.
Q. He just looked at it?
A. Yes, he examined it.
Q. What have you done towards curing this burned throat, if anything?
102 A. Well, I had some—I got some medicine to gargle, that is all.
Q. He gave you some medicine?
A. No, he didn't give me any medicine.
Q. Well, who gave it to you? Just went to the drug store and got some yourself?
A. Yes.
Q. What did you get?
A. I don't remember.
Q. How did you happen to get it, how did you know what to get?
A. Well, because I was sore in the throat all the time and I——
Q. The druggist prescribed for that instead of the doctor, did he?
A. Yes sir.
Q. Now, I understand you to say something about when you eat meat or anything of that sort, that you threw it up, threw up blood?
A. Yes.
Q. How long after the accident did that continue?
A. Well, I started to notice that right away after I came up from the hospital, or I was in the hospital for—just after I came up from the hospital.
Q. That is the hospital at Cordova?
A. Yes.
Q. How long did that continue after you left the hospital, very long?
A. What is that?
Q. How long did you continue to throw or spit up blood
103 from your throat after you left the hospital at Cordova?
A. Well, up to today I noticed it.
Q. What is that?
A. I have done it up to—up right up to today.
Q. Right up to now?
A. Yes.
Q. And you haven't taken the precaution or trouble of going to a doctor to get treatment?
A. Yes, I have been to a doctor.
Q. But he didn't think you needed any treatment, did he?
A. I don't know.
Q. He didn't recommend anything, did he?
A. Yes, sure, I was in the hospital for it.
Q. I thought you went into the hospital for something else?
A. No sir.
Q. What hospital were you in for your throat?
A. It was not for the throat.

Q. What was it for?
A. For the stomach.
Q. For the stomach. That was Dr. Leede's hospital, was it?
A. No sir.
Q. Whose was it?
A. Dr. Fick.
Q. Dr. Fick's hospital?
A. Yes.
Q. That is the one over on Boylston?
A. Boylston.
Q. He kept you there about three months?
A. Yes.

104 Mr. Aretander: Three weeks.

A. Three weeks.
Q. You were treated there for about three weeks, and his treatment consists of dietetic treatment—feeding, doesn't it, he doesn't give you any medicine at all.
A. Yes, every meal he gave me medicine, three or four times a day.
Q. But he made you eat specially prepared food for the purpose of building you up and giving you strength and flesh, did he not?
A. No sir, I didn't eat anything——
Q. The whole time you were there?
A. I ate only eggs—a little eggs and a little rice and milk, that is all.
Q. How many times a day would he require you to eat?
A. I don't know how many times; about three.
Q. You were not thin then, were you?
A. Yes sir, I was 158 pounds.
Q. And he built you up to one hundred and seventy-five, did he, in that three weeks?
A. No, I didn't gain anything in that three weeks.
Q. You didn't gain anything?
A. No sir.
Q. When did you begin to get thin?
A. Well, it is lately I have gained a little.
Q. Lately?
A. Yes.
Q. How long ago since you began to take on flesh?
A. Oh, about a couple of months.

105 Q. A couple of months. Since June you began to get better, that is, your flesh is beginning to increase, your weight has increased, I say?

A. Well, increased a little.
Q. It has increased you say, from 158 to 175 pounds or 180 pounds, whatever your weight is now. Now, Mr. Sandanger, you feel a great deal better now than you did a year ago, don't you?
A. Well, I don't feel much better.
Q. You don't feel much better.

A. I feel better, yes. I can't deny I feel a little better, but I don't feel——

Q. You don't want to deny that, you are glad that you do feel better, aren't you?

A. Yes, I feel a little better.

Q. And in the summer of 1917 you said you were unable to work over two hours in one day or two days?

A. No sir, I was not able to work anything.

Q. Were not able to work anything, and yet in the summer of 1918 you have improved to such an extent that you can put in about two-thirds of your time in work; is that right?

A. Yes.

Q. So that you are better in 1918 than you were a year ago, aren't you?

A. Yes, I — a little better.

Q. And you are able to work now and able to earn $4 a day?

A. No sir, I am not able to——

Q. Well, you are doing it, aren't you?

A. Well, if I work for a day I might have to lay off for a week; that is the way.

106 Q. According to your statement——

A. But it isn't because I feel better, but I have to do something for my living, I can't starve.

Q. So that you can work and you have worked about two days out of three since June; that is about right, isn't it? That is what you said, wasn't it—lost about a month since June?

A. Yes, I have lost about a month?

Q. So that you have been working about two-thirds of the time, at $4 a day, and you must admit that you are very much better than you were a year ago, both as to strength and as to weight, aren't you?

A. Well, I am better, yes.

Q. You have been improving steadily since June, haven't you?

A. If I wouldn't get better, I suppose I wouldn't be sitting here.

Q. Yes, you are getting better, aren't you? You think you are, don't you, you feel so?

A. I don't feel—the stomach is just as bad, and spitting blood. I can't eat any meat yet.

Q. Can't eat meat?

A. No sir, I can't touch meat yet.

Q. Now, do you suffer any from your hands, do they pain you now?

A. Yes sir.

Q. What sort of a pain is it?

A. It pains me right up to the shoulder.

Q. Right up to the shoulder?

A. Yes.

107 Q. You said something about having a pain across your stomach here.

A. Right across there.

Q. Where is that?

A. I have got pain there.

Q. Whereabouts is that, on your stomach or above your stomach, upon which place?

A. Right over the stomach.

Q. You have that sometimes?

A. All the time. If I eat any meat I got death sick altogether.

Q. And you have that pain pretty constantly, do you?

A. Yes sir.

Q. Across your stomach?

A. Yes sir. I have got that. I feel it all the time, and then if I eat different food I——

Q. When you left the hospital of Dr. Fick, who only kept you three weeks, did he advise you that you were getting better and well?

A. Well, he didn't know. He said I had to have time, he said.

Q. When were you at Dr. Fick's hospital, at what time was that?

A. It was in about three months before Christmas, I guess.

Q. Before last Christmas?

A. No, three months before.

Q. Well, about last November then, or October or November?

A. No, it was a little before.

Q. And you tell me that between the first of January and in June you didn't do anything?

108 A. No sir.

Q. Didn't do anything at all?

A. No sir, I didn't.

Q. Didn't try to do anything at all?

A. No sir.

Q. Now, Mr. Sandanger, you know something about coal oil and kerosene, and something about gasoline too, don't you?

A. Yes, I know.

Q. You know the difference between them, don't you?

A. Yes, I know difference.

Q. You can tell the difference between them by putting it in your hand and rubbing it: that is one test, is it?

A. Yes sir.

Q. What is the difference in the feeling of them, one is more greasy than the other?

A. Yes sir, the gasoline dries up when you put it in your hand, and the coal oil getting greasy, don't dry up.

Q. And can't you tell it from the smell when you are withdrawing it from the cask, you could tell whether it was gasoline or kerosene by the smell of it, couldn't you?

A. Well, I can't explain about it, but I could tell it, yes.

Q. Then if you were pouring it out of the faucet, out of a drum into a can, you could tell whether it was gasoline or whether it was coal oil, by the smell, couldn't you?

A. Oh, yes, I could tell it.

Q. Anybody could do that, couldn't they, that had had any experience in handling them?

109 A. If they had experience of handling it, I suppose.

Q. After the explosion one has a smoky smell and the

other—gasoline has none, has it? What is the difference between the smell after there has been a flare-up?

A. I don't know what the smell is when there is a flare-up. There is no smell at all——

Q. What is it?

A. When there is a flare-up, I don't know about the smell.

Q. I understood on your examination yesterday that after the explosion took place, this flare-up came, you could tell it was gasoline, from the smell?

A. Yes sir, I did.

Q. What is the difference between the smell of gasoline and kerosene after an explosion?

A. There is a difference. There is a stronger smell.

Q. What is the difference. What do you mean by stronger?

A. Well, it is a stronger—you can smell it upon——

Q. What sort of a smell has the gasoline? I will put it to you that way?

A. I don't know what you call it.

Q. What?

A. I can't pronounce it, I don't know what you would call it, but it is a different smell.

Q. What is the smell of the kerosene?

A. Well, it is not so strong as the gasoline.

Q. Not so strong?

A. No.

Q. Gasoline has a kind——

A. A different smell.

Q. Has a different smell, it is sort of a smokey smell, it
110 is like burning grease or something, is it, or wood?

A. I don't know. It is a stronger smell, that is all.

Q. What do you mean by a stronger smell between gasoline and kerosene, which has the stronger smell?

A. Gasoline got the strongest smell.

Q. Gasoline has a stronger smell after an explosion?

A. Yes.

Q. Can't you describe to me the difference between the smell of the one and the smell of the other, if you know?

A. Yes, I can tell you the difference.

Q. What is it?

A. Because it would not be so strong a smell if there was——

Q. What do you mean by "stronger" then?

A. Well, it is—I can't—stronger smell, that is all.

Q. What do you mean by the stronger smell tell me what is your understanding of the meaning of the word "stronger" there?

A. Well, it is stronger smell. You can smell the difference between the oil—gasoline.

Q. Gasoline is the stronger smell, a more pungent smell, is it?

A. Yes, stronger smell.

Q. It is a stronger smell, and the kerosene is a milder smell, is it?

A. Yes, milder smell.

Q. Yes.

A. Yes, sir, that milder smell.

Q. The fumes that came up after the explosion were very strong, were they, after the explosion on this boat in the cabin, they
111 were a very strong smell, and that is the reason you think it was gasoline, is it?

A. Yes, was strong, had gasoline smell.

Q. If it had a very mild smell, you would have thought it was kerosene, would you?

A. If there was kerosene I would——

Q. You would have known it?

A. I would have known it.

Q. It would have been a mild smell, it would not have been as strong as the other?

A. No, I would tell the difference in the smell.

Q. Which one would be stronger? What would be the difference? How would you distinguish? If it had been kerosene that was exploded, instead of gasoline, what would you have smelled, what difference would you have smelled between that and what you did smell?

A. Well, the difference is because the gasoline is stronger smell than the coal oil.

Q. But you can't tell us what you mean by "stronger" you can't describe it?

A. When you inhale it you feel it stronger, that is a different smell, different kind of oil.

Q. What is the kerosene smell—a stinking smell, is it, or is the gasoline the stinging smell?

A. It is kind of——

Q. Which is it, the gasoline smell—is the gasoline stinging or the coal oil stinging, which is it—bitter?

A. Well, the gasoline is stronger smell than the coal oil.

Q. The gasoline is more bitter, is it, has a stronger odor?

A. Well, in one way, I don't know, but that is stronger smell altogether, you can smell the difference.

112 Q. Which is it? I want you to tell me. You ought to know. You know what you mean. You say you can tell the difference. Try to explain to me in some way what that difference is.

A. Well, I can't explain it altogether.

Q. If you know——

A. It is a different kind of a smell.

Q. Tell wherein the difference lies; what is the difference? I am not trying to confuse you, I want the facts.

A. Well, the difference when the gasoline is stronger than the smell in the coal oil.

Q. What do you mean by "stronger," is the odor stronger of one than the other, or is one more bitter than the other, one more pungent? What do you mean, stinging?

A. Well, that is——

Q. Which is it now, give me the two smells; tell me the difference. You testified yesterday that you could tell the difference in

the smells. Now, I want you to tell the jury what is the difference between the smell or odor of kerosene and the smell of gasoline?

A. The difference—that is a stronger smell in the gasoline than is in the kerosene.

Q. That is all you can say, is it?

A. Yes.

Q. You can't make it any clearer than that one is stronger than the other?

A. No. You can easily tell that.

Q. Now, Mr. Sandanger, there is a difference in the odor and in the smell between the kerosene and the natural gasoline; I be-
113 lieve you stated that. Now, then, when you pour the gasoline in your hand and rub it, it wipes up quicker than coal oil, does it?

—. —.

Q. And coal is a little more greasy, too?

A. Yes.

Q. Can you distinguish the difference between them by sight, by looking at them? Can you tell the difference between kerosene, from looking at it and gasoline, from looking at that?

A. I haven't had any experience about the look at it.

Q. You can't tell?

A. But I can tell it in my hand.

Q. You can't tell it from the looks of it?

A. No. I can tell it on the——

Q. You have to look at it to tell it?

A. When I put it in my hand.

Q. But I say you can't tell simply from seeing it in the receptacle—they are both clear, are they?

A. Yes, they are both clear.

Q. Both transparent and you can't tell one from the other, can you?

A. No, except I used to take it in my hand; and I never had experience to look on it.

Q. Now, Mr. Sandanger, you say that this stove was a sheet iron stove, do you?

A. Yes sir, it was a sheet iron stove.

Q. What thickness was the iron?

A. It was a thin—I don't know about——

Q. The sheet iron, how thick was it, about one-sixteenth, do you think, or an eighth of an inch?

A. About a quarter of an inch.

114 Q. About a quarter of an inch thick; and what sort of grids did it have, cast iron top did it have?

A. Same kind of top—iron.

Q. Wasn't the bottom of the stove cast iron and a different material from the other part of the stove?

A. Not that I——

Q. Used to have regular caps that you put in and lifted up the caps or lids?

A. No, we didn't have that.

Q. You didn't have those. What sort of lids did you have on it?
A. Well, 'round lids.
Q. Well, are those made out of sheet iron?
A. Yes sir, sheet iron, but they were a little thicker.
Q. How did they go on, how did those lie on top there—say this was the cap, the top of this post——
A. Yes.
Q. —did the lid lay right into the hole?
A. Yes.
Q. How?
A. Yes.
Q. Or was it just a flat—was it like that, just went over the top of that, or over the top of the hole, or did it fit down into the hole?
A. It fit down into the hole.
Q. And you are positive that that was not cast iron?
A. Yes.
Q. What is that?
A. It was sheet iron.
Q. And not cast iron—on the top, I mean?
115 A. No sir, it was the same thing.
Q. Now, you remember when you put your hand down in there, raking the ashes up, that there was only about an inch and a half or two inches of ashes and sand altogether?
A. Yes sir, I do.
Q. As a matter of fact, don't you recall that it was not sand, but gravel; there may have been some sand mixed in it, but sand and gravel to the depth of four inches in the stove?
A. No sir, there was no gravel at all.
Q. No gravel at all in there?
A. No sir.
Q. As a matter of fact, the bottom of this stove was also of sheet iron, wasn't it?
A. Yes sir, sheet iron.
Q. And that sheet iron was how far above the bench—the bottom of the stove was how far above the bench, about how many inches?
A. About three inches.
Q. About three inches above the bench?
A. Yes sir.
Q. And when you put this wood in this sheet iron stove, it immediately became red hot, did it not—the whole stove would get perfectly red hot, wouldn't it?
A. No, well, if you put lots of wood in, I suppose it would get red hot.
Q. Heat up very quickly?
A. Yes, they heat up quickly, and they cool quickly too.
Q. Who got the dinner on that day in question—Mr. Stensland?
A. No, Isaac Utness.
116 Q. Who did cook the lunch?
A. It was Stensland who brought the lunch up.
Q. But who cooked—who heated the soup, made the soup and heated it up?

A. Well, Isaac Utness, he made a fire and he started to fix up the soup, and then——

Q. Who made the fire?

A. Isaac Utness.

Q. Utness made the fire?

A. Yes sir.

Q. Who put the soup on?

A. He put the water on, and then it was a can of vegetable soup was going to warm up.

Q. Just warmed it up?

A. Yes; and then he didn't know how to put that up, it was a new kind of——

Q. Who showed him how?

A. Iver Stensland, he showed him how.

Q. Iver went down where he was making the soup. Iver Stensland went down when he was making the soup?

A. Yes, went down when Isaac was making the soup and helped him.

Q. Helped him make the soup. So that Iver Stensland was down and helped prepare the lunch, was he?

A. Isaac was preparing the lunch, but Stensland came down and show him.

Q. Where were you at that time?

A. I was on deck.

Q. How did you know who made the fire that day?

A. Because I saw it with my own eyes.

117 Q. You looked down, stuck your head down through the hatchway to see?

A. Yes sir, could see it when standing aft on the boat, you could see right down, because you see——

Q. Where were you standing in reference to the cabin?

A. I was standing on the middle of the boat.

Q. Looked down and saw Stensland making the fire, wasn't he?

A. No sir, not Stensland.

Q. I mean Utness making the fire?

A. Yes sir.

Q. How did he make the fire?

A. Yes sir, I did.

Q. How was he making the fire, what was he using?

A. He put a little wood in, the same kind as I had, I guess, and then he took a little waste.

Q. And put waste in, did he, and then lighted the fire?

A. Yes sir.

Q. You saw Utness do that?

A. Yes sir, I saw him do that.

Q. And you are sure that Mr. Stensland didn't do that?

A. No sir, he never—he was not down; he was on deck when Isaac made the fire.

Q. Then he went down to help him get the soup up?

A. Yes.

Q. And after the soup was prepared, that was put up on deck on the table?

A. Yes——

Q. And who prepared the coffee that day, Mr. Utness or Mr. Stensland?

A. Well, they had the coffee on the stove at the same time.

118 Q. How did you happen to know of that, Mr. Sandanger? You saw the coffee pot on the stove?

A. Sure I saw the coffee pot.

Q. How many lids were there on the stove, four or two?

A. Two.

Q. One had the coffee and the other the soup?

A. Yes sir.

Q. Did Mr. Stensland go back to make the coffee?

A. He brought up first the soup and then he ran down and got the can of coffee.

Q. Ran down?

A. Yes. Well, he went down on the floor and took it off the stove.

Q. He had to go down in the cabin to get it, didn't he?

A. Yes, he went down and took it off of the stove with his left hand and brought it up.

Q. You didn't see him go down and make the coffee or put any more wood into the stove?

A. I saw him when he took the coffee pot off.

Q. Do you know whether he put any more wood in the stove or not?

A. No sir, he didn't put any more wood in the stove at all.

Q. How does it happen that you remember whether he did or whether he didn't put any wood in the stove?

A. Because I was sitting right on the hatches, I was sitting on a little box there, and we had a table right there, and we could see right down in the forecastle.

Q. You were watching him very closely, were you? Why?

A. Well, we didn't watch him, we were up on——

Q. How did it happen that you observed so closely whether

119 Mr. Stensland put any wood in the stove, any additional wood in the stove, or whether he didn't? You didn't see him put it in?

A. No, I didn't see him put wood in there. He didn't put any wood in at all.

Q. He didn't put any wood in, so far as you know?

A. No.

Q. You didn't see him put it in?

A. No, he didn't put any in.

Q. You wouldn't say he didn't put it in, would you? How do you know he didn't?

A. Because I saw it.

Q. Did you keep your eye on him every minute to see whether he was putting any more wood in that stove or not?

A. Because I saw when he went down and took the coffee can from the stove, and he didn't go back again.

Q. While he was down there, did you watch him every second he was there, every minute he was in the cabin?

A. He was not down after he brought the coffee up; there was nobody down there after that.

Q. How do you happen to remember that so well?

A. Well, I suppose I can remember that just as well as any of the rest of it.

Q. You remember that with accuracy, do you, clearly, that Mr. Stensland didn't put any more wood in the stove?

A. Yes sir, I do.

Q. How?

A. Yes sir.

Q. Do you know whether anybody else put any wood in the stove?

A. There was nobody down after we took the——

120 Q. You testified this morning that there was not any fire in the stove from breakfast on until lunch time?

A. No sir, there wasn't.

Q. You were watching the stove all during that six hours, were you, prior to lunch?

A. You can easily see if there was any fire, and there was nobody down in the cabin, anyhow.

Q. What were you doing on deck, what was your business, was it watching the stove to see whether there was fire in there or not?

A. I was the crew on the boat, I could be anywheres on the boat.

Q. Could be anywheres, but you now say that during that whole morning you were watching the cabin so closely that you know there was no fire in there at all; are you prepared to swear to that?

A. How is that?

Q. I say, you are prepared to testify that nobody was in that cabin in the forenoon?

A. Well, Isaac Utness, he was supposed to run the engine and he was down to run the engine.

Q. Who was that?

A. Mr. Utness.

Q. Utness was running the engine?

A. Yes.

Q. Where was the engine located with reference to the stove?

A. Well, there was about four feet away from the stove.

Q. Further in the cabin?

A. In the center of the boat. The stove was standing on

121 the side. Engine was in the center.

Q. The cabin covered the engine and the stove both, did it?

A. Yes sir.

Q. They were all in the same place?

A. Yes.

Q. Now then, when the explosion took place the gasoline around the engine—it blew out the gasoline so that the engine stopped, did it? It was all black, too, wasn't it, around the engine?

A. It was all black that was in there at the time of the explosion, it was all black.

Q. It stopped the engine?

A. The engine didn't stop when it was running for a little while.
Q. It was a gasoline engine, wasn't it?
A. Well, at that time she was running with distillate, a different grade of oil.
Q. It stopped, too, you said, awhile ago, didn't you?
A. That stopped after——
Q. What?
A. Yes, she stopped.
Q. The engine stopped?
A. Not exactly when the explosion was.
Q. How long after the explosion did the engine continue to run?
A. Well, she ran about—she ran about—there was about 150 feet, I guess, after, it ran.
Q. 150 feet before she stopped?
A. Yes.

Q. And yet that explosion—the engine and the stove and
122 you were all in the same cabin, and it blew you over, knocked you against the side of the vessel, rendered you somewhat unconscious, and yet the engine continued to run—the gasoline engine, did it?
A. Yes, it ran a little while.
Q. But it did stop, did it?
A. Sure she stopped.
Q. Did she stop because she was put out of commission by the explosion, or not?
A. Well, I was not aboard when they stopped it. I don't know about that. But she stopped and the boat was laying there and I was in the water.
Q. Was Mr. Utness down with the engine when the explosion occurred?
A. He was just coming down to——
Q. He was not at the engine, he was not down by the engine when the explosion took place, was he?
A. Yes, he was. It is—that is, he was just coming down; he was going to oil the engine.
Q. He was coming down from the deck?
A. Yes.
Q. But he was not down in the engine room at all?
A. He was down in the cabin where the engine was.
Q. He was in the cabin?
A. Yes, he came down—just was coming down the steps and coming right down when the explosion——
Q. Was he down by the side of the engine when this explosion took place, or was he up on deck?
A. He was down beside of the engine, just came down on the floor.

123 Q. He was down inside of the cabin when the explosion took place?
A. Well, he was right back of the stairway, right—you know there is——

Q. There are two or three steps from the deck down to the bottom of the cabin, aren't there?

A. There is two steps.

Q. Two steps, yes. Where was he with reference to the engine?

A. He was standing right back of the steps, was going to oil the engine.

Q. Was standing on the deck, was he?

A. No sir, he was not standing on deck.

Q. Was he standing on the steps?

A. He was standing just—I don't know if it was one foot on the steps and the other on the floor, but he was just—just going right down.

Q. Now, was he burned at all?

A. Yes sir, he was burned.

Q. He was burned some too, was he?

A. Yes, he was.

Q. He went on up?

A. Yes; it throwed him right out. He was standing, it throwed him right out through the door.

Q. And everything in there you say was smashed up all to pieces, things were knocked down, dishes were knocked around?

A. Yes.

Q. And you were thrown around?

A. Everything was mussed up.

124 Q. And the tin can was thrown out of your hand, was it?

A. Yes sir, there was busted all to pieces.

Q. It didn't bust all to pieces in your hand, did it; the explosion came up out of the stove and struck the tin can and exploded it too, did it?

A. Yes sir, I was holding the can in my hand and he busted right when I was holding in my hand.

Q. You held it in your hand after it exploded, did you?

A. No sir, I didn't.

Q. Where was it when it exploded, had you dropped it?

A. The pieces was scattered all over.

Q. Scattered all over the room, were they?

A. Yes sir, they was.

Q. Now, isn't it a fact that the tin can was thrown over clear across the room against the wall before the explosion took place—before the explosion of the oil in the can?

A. Not before the explosion.

Q. When you dropped the match into the stove, you held the can in your left hand or your right hand, you took your left and dropped your match in there, and the explosion came from the oil in the stove, and that is what flared up, wasn't it?

A. Well, when I was going to drop the match the explosion went immediately, so I don't know.

Q. You don't know.

A. It came—the can and the whole business exploded all at once.

Q. You don't know anything about it.

A. As soon as I was going to drop, so I don't know anything
Q. You were unconscious from it, but you saw the match
125 drop and the flames come up, you didn't know anything——
A. Just like a cannon shot to me.
Q. You never saw this tin can until after you came up out of the water, did you?
A. No, I didn't see it.
Q. You never saw the tin can any more after the explosion——
A. Not before I came——
Q. After you dropped the match, until you had been up on deck—down in the water and come back?
A. No, not before I came from the water.
Q. How is that?
A. No, I didn't see it before I came from the water up.
Q. You didn't see it between the time—while you were still in the cabin before you went up on deck?
A. Yes, I saw it in the cabin, but I say I didn't see in the explosion.
Q. You didn't see the tin?
A. I saw it before the explosion.
Q. I understand that, but I mean after the explosion you never saw the can until after you came back on deck after you had been in the water?
A. No sir.
Q. Now, what else was broken in that cabin, any of the dishes broken?
A. The dishes were broken, some of them, and everything was scattered all over.
Q. What became of the stove, was that blown off of its legs?
A. It didn't have any——
Q. I say the stove?
126 A. Well——
Q. What became of the stove?
A. Well, the stove was not broken, but——
Q. Was it still remaining resting on the bench?
A. Yes. I saw it was broken a little there side of the—cracks on the stove on the back side.
Q. The stove was cracked, you say?
A. Yes, it was cracked a little.
Q. Well, where?
A. In the seam.
Q. On the stove—which seam?
A. Well, it was cracked in the——
Q. Was it in the front or in the back?
A. It was in the back, back; it was cracked in the back.
Q. Did you go over and look at it?
A. I could see that—well, in the front, in that one end; that is in the back.
Q. On the front end or the back end the seam split open a little?
A. Yes.
Q. But it was not knocked off of the rack where it was resting?
A. No, it was not knocked off.

Q. Still on the bench?
A. Yes.
Q. The stove pipe was up there, it was not knocked off, was it?
A. The stove pipe was knocked out.
Q. The stove pipe was knocked out?
A. Yes.
127 Q. Was anything else knocked off the stove, were the lids thrown off?
A. The lids was off on the floor.
Q. Were the ashes thrown out of it, or the gravel scattered over the floor?
A. Yes, some of it.
Q. Some of the ashes were blown out, were they?
A. Yes sir.
Q. But the stove still rested in the same place?
A. Yes, but it was screwed fast, you know.
Q. Screwed to the bench, was it?
A. Yes.
Q. Mr. Sandanger, if the bottom of that stove was only three inches above the bench, you would have to have three or four inches of gravel and sand in there to keep it from setting fire to the bench, wouldn't you, if you only had a sheet iron bottom?
A. No.
Q. Isn't that the reason that the——
A. I guess three or four inches in the stove, there wouldn't be anything left for the wood.
Q. Isn't that the reason they put the sand and gravel into these stoves, because they rest right above the wood and it is to keep it up, to get the bottom up, to protect the bottom?
A. I suppose they do.
Q. That is why it is done, isn't it?
A. I suppose so.
Q. You know it, don't you, you have had experience?
A. Yes.
128 Q. You put the sand and gravel, you put sand and gravel in it, put in three or four inches in the stove so as to protect the bottom and keep it from getting so hot that it will set fire to the wood adjacent to it, don't you?
A. I didn't put anything in that stove.
Q. I say that is why you put it in all of the stoves on those boats up there?
A. No, they use it—some of them they used to put a little, but they commenced to get different kinds of stove now.
Q. This stove just had a sheet iron bottom, didn't it?
A. Yes. It was sheet iron all around, the whole stove was sheet iron.
Q. On all of these sheet iron stoves used on the vessels, it has been your experience that it has been the custom to put three or four inches of sand in there to protect the bottom or to keep it from setting fire to the wood, hasn't it?
A. No sir, if they put three or four inches there wouldn't be——

Q. They put sand in there for that purpose?
A. They may put a little, put an inch or so.
Q. I ask you if it is not the universal custom to put sand and gravel in the bottom of those stoves used on those boats?
A. Yes, usually put an inch or so, a little.
Q. A little?
A. That is all we put in, a half an inch or an inch, that is all they used to put in.
Q. And yet you say there was not any sand or gravel in there, don't you, nothing but ashes?
129 A. I said there was sand and ashes, there was an inch and a half.
Q. An inch and a half of sand and gravel?
A. But not over two inches in the stove, I said.
Q. You told me you took your hand and raked it through that gravel. What for?
A. Because for pushing the ashes aside so that I could have a chance to put the wood in.
Q. And you put your hand down through the gravel, did you?
A. Yes sir.
Q. Clear to the bottom of the stove?
A. Yes, clear to the bottom of the stove.
Q. I mean clear down. Your fingers came in contact with the tin bottom, did they—I mean this sheet iron bottom?
A. Yes sir. I dug right down to the bottom. The stove is only about eight inches high.
Q. Took your hand and raked clear around all through there, did you?
A. Yes sir.
Q. And you found it was only about an inch and a half?
A. Yes.
Q. Wasn't any heat there at all?
A. Was no heat there at all.
Q. Not a bit?
A. Not a bit, no sir.
Q. How long had it been from the time you finished eating your lunch before you went back to build up the fire to heat the water to wash the dishes?
A. From the time we started to eat the lunch until I went
130 down, it was from—about an hour and a half or two hours.
Q. An hour and a half or two hours?
A. Yes.
Q. Nobody had been down in there between times at all?
A. No sir. Nobody went down there. It was all on duck hunting.
Q. Was Mr. Utness out on deck all the time?
A. Who is that?
Q. Utness?
A. Utness, yes.
Q. All four of you?

A. The four of us was standing right there on the back end of the cabin—John Jorgenson——

Q. And you stayed there for two hours after you finished luncheon and no one went down in the hole?

A. It took us about twenty minutes or a half an hour to eat.

Q. It took twenty minutes or a half an hour to eat, and then you all got up and left the table——

A. We didn't have any table except some setting on the cabin.

Q. Who was running the vessel?

A. John Jorgenson was running the vessel and he was eating.

Q. Who was down in the engine room, if anybody?

A. There was nobody, because he didn't have to go down to oil the engine.

Q. The engine was just left run for two hours then, didn't anybody bother it; going right straight ahead, were you?

A. We were going right straight ahead, running along the beach.

131 Q. I understand you ran along the beach, you were not off several miles to do some duck shooting?

A. Well, was running along the beach, was going ahead.

Q. You didn't stop at all?

A. No. Well, we stopped once and picked up these here two ducks—we stopped once to try to pick up a duck.

Q. You didn't pick up any of the other things that you shot?

A. No, we didn't pick up anything other. They were on shore, they were eagles.

Q. Nobody was in the engine room then for about two hours; is that — you want to say?

A. Yes sir.

Q. Nobody was in the cabin?

A. No sir, there was nobody in the cabin for two hours.

Q. As a matter of fact, didn't Mr. Stensland, as soon as you finished your lunch, which took you about fifteen or twenty minutes, after you had eaten didn't he say "Boys, let's clean up everything now and get things in shipshape"?

A. No sir, he didn't.

Q. And didn't he tell you to go down or said somebody should go down and start a fire?

A. No sir, not before about an hour and a half or two hours afterwards.

Q. Wasn't it just after you got up from the table that you went down to do this?

A. No sir.

Q. Within about fifteen minutes after you had the coffee brought up on deck?

A. No sir.

132 Q. And didn't Mr. Stensland tell you that you had better go down and fix up a fire to wash the dishes, and when you went down there isn't this the fact about it, that you took the wood and put it into the stove, without ever looking at it at all, and that

the gravel and sand were hot at the time you poured that kerosene on it?

A. No sir, that is not true.

(Short recess.)

(Mr. McCord:)

Q. Mr. Sandanger, when did you say that you first went into the oil house on the cannery dock at Cordova?

A. That was about four days before I got hurt.

Q. What did you go for?

A. Priming oil, gasoline.

Q. For use on what boat?

A. On the same boat.

Q. Where did you take that oil?

A. I took it from a hundred-gallon drum.

Q. After you got the oil—I didn't ask you that—after you had drawn the oil into the can, what sort of a can was it?

A. It was a little red can, about a fourth of a gallon.

Q. And you took the gasoline in that, did you?

A. Yes, sir.

Q. You wanted some gasoline in that?

A. Yes sir.

Q. And you say you got this out of the oil house, did you, out of one of the drums?

A. Yes sir.

Q. Which one?

A. The gasoline drum.

133 Q. On which side of the house as you entered, on which side as you entered the oil house?

A. It was on the right side as I went into the door.

Q. These barrels or drums were all on racks lengthwise facing you as you came into the door?

A. Yes, they were right on the rack.

Q. And you took the first one or the gasoline tank, was it?

A. Yes sir.

Q. And had nothing marked on it at all?

A. No sir, there was no mark at all.

Q. Did you see any kerosene drum there?

A. There was a kerosene drum, the same size, laying alongside of the gasoline.

Q. How did you know it was a kerosene drum?

A. Because I pumped some out.

Q. Out of which?

A. I took first out from the gasoline drum in my hand, and then I find out it was gasoline, and I pump some of the other too, so as to be sure.

Q. Well why—if you knew it was gasoline, having tested it in your hand and could test it by the smell——

A. Yes sir, I put it in my hand——

Q. I want to know why it was that you went up to that drum and

pumped some of it out, pumped it in your hand, tested it, smelled it, knew it was gasoline, and then why did you pump some out of the kerosene tank?

A. Well, because I was going to be sure.

Q. Why did you want to be sure? You wanted gasoline didn't you?

134 A. Yes sir.

Q. And you knew it was gasoline that you had taken, after testing it, didn't you?

A. Yes, sure I knew it.

Q. Well, why did you go to the trouble of testing it again by pumping some out of the other barrel or the other tank or drum?

A. Well, because I wanted to be sure that there was——

Q. Did you change the pump from the gasoline drum to the kerosene drum?

A. Yes sir, I did.

Q. You had the pump in the gasoline and then you took that pump out and put it over into the other tank, did you?

A. Yes sir.

Q. All for the sole purpose of making sure when you were already sure?

A. Yes sir, surer, find out.

Q. You were already sure it was gasoline, but you wanted to make absolutely sure?

A. Yes.

Q. You were very careful about this, weren't you?

A. Yes, I am always careful.

Q. And other men are always careful, they all test them, do they, that way—is that the custom?

Mr. Arctander: I object to that, as to whether the other men are careful or not.

Mr. McCord: He knows whether it is customary or not.

The Court: Objection overruled.

A. I know it myself.

(Mr. McCord:)

135 Q. Was it the custom of other people to make this same sort of test?

A. I don't know.

Q. Now, how many drums were there in this oil house?

A. That was two 100-gallon iron drums.

Q. On the right hand side, lying side by side?

A. Yes sir, right on the rack when you came through.

Q. Now, on the left hand side of the door were there any drums?

A. There was a barrel, one barrel of lubricating oil.

Q. Do I understand you to say that there were no faucets or openings in these barrels—in the ends of these drums?

A. No sir.

Q. How do you know that, did you look there to see?

A. Yes sir, I looked, and if there was any I would use them.

Q. You would. Well, was there any plug, was there any hole there that had been plugged up?

A. Oh, I couldn't see any.

Q. You couldn't see any?

A. No.

Q. And that is the only time you were ever in this house, was it, just on this one occasion?

A. Yes, I was in there.

Q. Were you ever there before?

A. No, I was not in there before.

Q. Don't you know that the Carlisle Packing Company kept its gasoline in another part of the dock and only kept the kerosene in this oil house?

A. Well, they kept the gasoline in the oil house when I was in.

136 Q. But don't you know, as a matter of fact, that at that time they had gasoline in drums stored on another part of the deck?

A. I didn't see any. I saw some distillate and coal oil was mixed together alongside of the warehouse.

Q. Alongside of the oil house, but on the outside.

Mr Aretander: The warehouse.

(Mr. McCord:)

Q. Warehouse. Where was the warehouse located in reference to the oil house?

A. It was about seventy-five or eighty feet.

Q. Seventy-five or eighty feet. How many drums were there there?

A. Well, I didn't count them.

Q. There were a lot of them, weren't there?

A. I should think there was about a couple or three dozen maybe.

Q. And some of it was coal oil, was it, out there?

A. Yes, they was all mixed up.

Q. How could you tell the difference between the kerosene drums out there and the gasoline?

A. Well, I didn't—I couldn't tell any difference at all except——

Q. Except what?

A. Except when they—some, I know the fellows said there was coal oil, they went and took some.

Q. You testified a moment ago that the distillate and kerosene were all mixed up in the tanks out there at this warehouse. Now, how do you know that there was kerosene there and distillate there?

A. Because there was the same kind of drums there was

137 in the oil house.

Q. The same kind that there were in the oil house?

A. That is the only thing I know.

Q. There were not any marks on any of those drums outside?

A. No sir, I didn't see any.

Q. You could see the red ends and the white ends of these drums, couldn't you?
A. I couldn't see any red ends and white ends at all.
Q. Didn't have any of them painted?
A. No sir.
Q. Either at the warehouse or in the oil house?
A. No sir.
Q. In either place?
A. No sir.
Q. You didn't see any. So that you could not distinguish whether there was kerosene out at the warehouse, or not, could you?
A. Well, there was the same kind of drum.
Q. You just assumed that it was kerosene?
A. Distillate and kerosene.
Q. I say, you just guessed at that, did you?
A. I didn't see any mark that there was, but——
Q. What is the practice and custom everywhere—you have been handling gasoline around up in that country—don't they always put the ends—paint the ends of the drums red, when it is gasoline, and the ends of the drums white, when they have kerosene?
A. No sir, I never saw that up there. They get the drums from —that is, the old drums, they go over to Katalla and get them, they never paint them and they never do anything. That
138 is the reason why.
Q. As a matter of fact it is the custom, however, in the handling of gasoline and kerosene and distillate, to paint the ends of the drum red when it has gasoline, and the end of it white when it has kerosene, isn't it?

Mr. Arctander: I object to that question——

(Mr. McCord:)

Q. Isn't that the custom?

Mr. Arctander: —as not proper cross-examination on anything that was brought out on direct—what the custom is in that country.
Mr. McCord: If he knows what it is. It all bears on his knowledge.
The Court: Objection overruled.
Mr. Arctander: Exception.

(Mr. McCord:)

Q. Isn't that the custom up in—everywhere?
A. Well, I haven't seen it up in that country. I haven't seen the name on any drums there.
Q. That you haven't seen what?
A. Not up there.
Q. Up where?
A. Up in Cordova and around in through Alaska.
Q. You have been up there seven years?
A. Yes.

Q. You have been handling gasoline on boats seven years, and you have been buying gasoline to be used on boats for a long time, seven years?

A. Sure.

Q. I ask you if it is not the custom to have the ends of gasoline cans red and the ends of the—I mean drums, instead of

139 cans—and the ends of the kerosene drums white?

A. I suppose so.

Q. You know that is the custom, don't you?

A. Yes, I know that is the way they should be, yes, that is the way they should be.

Q. How do you know that they bought kerosene at Katalla? Don't you know, as a matter of fact, that there is no kerosene at Katalla—made at Katalla, but that you get some gasoline at Katalla and get your kerosene from Seattle?

A. Well, they say that they get the kerosene and distillate from Katalla; they told me; I didn't see it. The only thing I saw, they had the same kind of drum, and I thought it was.

Q. Somebody told you that, then, did they?

A. Yes sir.

Q. You didn't see it. You don't know that they got any kerosene at Katalla, do you?

A. No. I couldn't——

Q. You have no personal knowledge of it?

A. Because I never tested any oil that came from there.

Q. As a matter of fact, you know you don't buy kerosene in large quantities, except at retail, at Katalla at all, they don't make it, do they, up there?

A. Well, I don't know.

Q. You get your gasoline, they have large quantities of gasoline at Katalla, don't they?

A. Yes.

Q. But they don't have any kerosene, do they?

140 A. Well, I haven't been over there.

Q. You never got any there, did you, yourself?

A. I have never been over there and got any at all.

Q. You don't know anything about that?

A. I have not been over there.

Q. As a matter of fact, don't you know that the Carlisle Packing Company procured all of its kerosene from the Standard Oil Company in Seattle and had it shipped up there in drums—don't you?

A. Oh, no, I don't know nothing about that.

Q. Didn't they ship it up on the boat that you went on? You went up there on the 13th day of February, 1917, on what vessel?

A. I don't know. It was one of the Alaska boats. The "Alameda," I guess.

Q. On that same boat, on your arrival at the cannery, didn't you see them unloading kerosene drums from the Standard Oil Company?

A. No sir, I didn't see it.

Q. You didn't see it?

A. No sir.
Q. You would not say that they did not, would you?
A. If I saw it, I would say I saw it.
Q. What?
A. If I saw I would say I saw it, but I didn't see it.
Q. You don't remember whether it was unloaded or not, you just don't have any recollection of seeing it, do you?
A. No. The only thing I saw up at that cannery came from Katalla, the oil.

Q. Did they unload any gasoline on the dock that day, on
141 the arrival of this vessel from Seattle, on which you went?
A. On the dock?
Q. Yes, on the dock at Katalla, at the cannery company dock—I mean the cannery company's dock at Cordova?
A. No sir, not on the cannery company's dock. I didn't see any.
Q. You didn't see any?
A. No sir.
Q. They might have unloaded it and you might not have seen it or heard of it?
A. I don't know anything about it, of course, I didn't see it.
Q. You didn't see it?
A. No sir, I didn't see it.
Q. You are positive that these steel drums had no markings on their ends at all, they were not painted either red or white?
A. No sir.
Q. You are positive of that, are you?
A. Yes, there was no mark at all.
Q. No marking at all?
A. No sir.
Q. That was about four days before you were injured, was it?
A. Yes sir.
Q. You were careful enough to be sure to get gasoline when you went in, weren't you?
A. Yes sir. I was in there to get gasoline and I got gasoline.

142 Q. And you were sure enough to get the kerosene too, wern't you—to find out which tank the kerosene was in?
A. Yes, sure I found out.
Q. And you found it out without the signs, without it being marked "Pearl Oil" or "Kerosene Oil" or anything of that kind?
A. Yes, sir, there was no mark on it.
Q. Do you know why they paint these ends white for kerosene and red for gasoline, customarily—I say, do you know why this was done up there?
A. Well, I have not seen it up there. I have not seen any white ends or red ends up there.
Q. You say you have seen it?
A. I have not seen it.
Q. But I say do you know what the reason of it is?
A. I suppose the reason was want to tell one oil from the other.
Q. So one can be told from the other?

A. I guess that is the reason; everybody knows that.

Q. On the ends of these drums you say there was no faucet. Was there any hole for a faucet? You say it was not painted over, you could see it.

A. I couldn't see any hole. When I saw there was no faucet, then I didn't look.

Q. These were steel tanks, weren't they?

A. Yes sir.

Q. Cast iron or steel, wern't they—the drums?

A. Maybe the hole was in the back end; I would not see anything for that because I could not look, because it was laying close to the wall.

143 Q. You do know that in every one of those steel drums for the holding of gasoline and kerosene, there is a hole—one above the other, on one or the other end of every one of those drums, for the purpose of putting in a faucet?

A. Yes, I have seen that.

Q. And they always leave a vent above, don't they, leave a hole——

A. Yes, there is one hole on top.

Q. Have one hole at the bottom, to put the faucet in and draw the oil out, and above that, near the top of the barrel, or near the top of the end, they put in another hole, to make a vent so that the oil can run out, don't they?

A. On the belly of the drum.

Q. On the end of the drum?

A. On the end of the drum.

Q. Now, were those there in this case?

A. I could not see any plug in the end, but I saw there was a hole on the belly, a plug there.

Q. That was up on top, a bung hole that was on top of the barrel itself?

A. Yes sir.

Q. You were not in there for four days after this occasion, after this oil was drawn out, you say, for Mr. Stensland, were you?

A. No.

Q. So that at the time Mr. Stensland, if he did draw this gallon can of kerosene or gasoline, whichever you may say it is, you don't know whether there was a faucet put in between the time

144 you were there and the time it was drawn off, or not, do you?

A. Well, there was no faucet when I was in, and I don't know after that, I was not in.

Q. I say you don't know what took place there in that interval of four days, do you?

A. No.

Q. You don't know whether there was a faucet put in or whether there was not?

A. No, because I was not in; that was only one time I was in.

Q. You do know that those holes—they were put onto racks, these drums—and those holes are in the ends of the drum, for the direct

and sole purpose of putting in a faucet and drawing out the oil, isn't it?

A. The hole there is supposed to be there, but I didn't see any hole like that when I was in. Maybe they was in the other end of the drum that was facing the wall, maybe that.

Q. You didn't look at the other end?

A. If there was any, they was in that end, because I didn't look there.

Q. I say you didn't look at the other end?

A. Because the pump was standing on the belly in the hole, so I didn't think——

Q. So you only looked at one end of the drum?

A. Sure.

Q. There might have been a faucet in the other end, might there not?

A. No, it was laying right up against the wall.

Q. Right against the wall?

145 A. Yes.

Q. Then whoever put those drums in there turned them around and had the wrong end first?

A. Yes, I suppose they rolled them right up and then twisted them around that way. That is the only way they could lay on that rack. Of course, it is only a 4 by 6 laying this way.

Q. Were there two pumps, one for the gasoline and one for the kerosene or were they interchangeable?

A. No sir, there was only one pump; changed from one drum to the other.

Q. Were there any fumes in the cabin, Mr. Sandanger, from the operation of the gasoline engine?

A. Oh, well, not much.

Q. You could smell it, could you?

A. Well, you always in a gasoline boat can smell a little gas.

Q. Smell a little gasoline in there?

A. But not anything like that.

Q. Not anything like what?

A. Not any gas, there wasn't any gas.

Q. But you could smell the fumes in there?

A. You could smell the gasoline smell, you know, that is all.

Q. If there was any leaking in the engine room, any gas in there, that would have been communicated, you could have smelled it in the cabin where the stove was, couldn't you?

A. Yes, but there was no leaking.

Q. There was no leaking?

146 A. No.

Q. How do you know?

A. I could not see any.

Q. You didn't see any. You didn't get down where the engine was, did you?

A. What is that?

Q. I say, you were not back where the engine was, were you?

A. The engine is in the same room.

Q. Well, how far away from where you were standing?

A. About four feet.

Q. Only four feet from the stove?

A. Yes, from the stove, engine is four feet, yes.

Q. Just four feet. You are sure there was not any fume of gasoline in there from the engine, are you?

A. Yes, sure there was not.

Q. But you didn't examine it to see whether there was anything leaking around the engine, or not?

A. No, I didn't, because I didn't have anything to do with the engine that day.

Q. I would like you to tell me why you would use your hand to rake up ashes, instead of a piece of board or a stick?

A. Well, because I know that there was no fire in there and I took my hand to push the ashes on one side.

Q. You knew that if the ashes were hot, or the gravel was hot, or the sand was hot, and you poured coal oil in on it and then dropped a match, you knew that was dangerous, didn't you?

A. What is that? I didn't hear it.

Q. You knew that if those embers—that if those ashes
147 had been hot and the gravel hot and you poured the coal oil in on wood and on those hot ashes, and then struck a match to it—you knew there would be an explosion, even if it was kerosene, didn't you?

A. I never seen that.

Q. I say you knew it, didn't you?

A. I know there would not be an explosion from kerosene.

Q. You knew that if you poured coal oil on hot embers, and wood on top of that, and then dropped a match in, that you were going to have an explosion, didn't you?

A. No, there would not be no explosion; all there would be would be a little flare-up; that is all there would be, with coal oil.

Q. And if a flare-up, it would flare right up, clear up out of the stove and burn your face, wouldn't it, just as everybody's experience shows—you knew that, didn't you?

A. No.

Q. You knew—that is the reason that you were testing out to see, was it not, whether the ashes were hot, was to avoid the flare-up when you touched your match to it after you poured your oil on the wood, wasn't that your reason for it, now?

A. No, the reason was because I wanted to have the ashes on one side so that I could get the wood in; that is the reason.

Q. You didn't use your hand, then, to test the fire?

A. No, I didn't.

Q. You were not trying to find out whether it was hot or not?

148 A. I was not trying to find out it was hot or not, I was trying to get—I was trying to get the ashes on one side so that I could get the wood in and start the fire; that is all I was going to do.

Q. So that you were not making any investigation to determine whether there was any heat there or not?

A. No, sir, I didn't, but when I came down with my hand everything was cold, there was no fire there.

Q. Now, how did it happen that you used your hand for the purpose of raking ashes away when you could have picked up a piece of wood, a plank, that you were making the fire with, why wouldn't you use that to strip away the ashes, rather than your hand?

A. Well, because we always used to do that when we were out fishing. I used the hand, it is handy. If there is a handy stick, we might use that, and if we can't see any we use the hands.

Q. You had pieces of plank there with which you could rake the ashes away so as to make room, and yet you used your hand for that purpose, did you?

A. Well, if there was any handy, I might take that, but you see there is always—we always used to take the hand if there is not any heat in it——

Q. The truth of the matter is that you used your hand to see whether it was hot or not, isn't that it?

A. I used my hand, but I didn't find it—I found out it wasn't hot after I——

Q. (Interrupting.) You were trying to test it to see whether there was heat there or not before you put the coal oil on it?

149 A. No, I was not trying to test it, but——

Q. You thought there was fire there, thought there might be some fire there and you would make yourself sure, didn't you?

A. No, sir. I know there was a long time before there was fire. I know it was cold anyhow, so I took my hand, and that is all I wanted to do, was to put the ashes on one side so that I could get the wood in.

Q. But you had no intention of trying to find out whether there was any hot embers there or not? That was it, wasn't it?

A. I found that out after I——

Q. Yes, but that is why you did it, wasn't it, to find that out?

A. It was not my intention to find it out.

Q. It was not your intention?

A. But I find it out after.

Q. What?

A. I find it out there was no embers or anything——

Q. But you didn't use your hand to ascertain whether there was any fire there or not, did you, or did you?

A. I used my hand. I put my hand right in the stove.

Q. You say you pushed it over, you pushed the ashes out of the way to make room for the wood?

A. Yes.

Q. And went down, put your hand in there to ascertain whether there was any fire there or not, didn't you?

A. There was no fire there at all.

Q. I say, you didn't put your hand in there to move the ashes around to see whether there was any fire or not, did you?

150 A. Well, I put ashes around when I say there was no fire at all.

Q. But I say did you do it for that purpose, to find out whether there was any fire?

A. I suppose I found that out in the same time.

Q. Yes, but were you trying to find out whether there was any fire there or not by raking the ashes away with your hand?

A. I was trying to find it out—trying to find it out——

Q. You knew there was no fire there and you were not trying for that, were you?

A. I was not going down and try to see if there was any fire.

Q. You knew there was not any fire there, did you?

A. Well, it was a long time; I knew there was not any fire.

Q. I say, you knew, before you touched it, that there was no fire there, didn't you?

A. Yes, sure I know.

Q. As a matter of fact, Mr. Sandanger, don't you know that the reason that you had this explosion was because you were mistaken and that there were hot coals there, or hot embers under the ashes and the gravel was hot, and when you poured this coal oil on there and struck a match to it, it flared up, flared?

A. No sir, there was no hot embers or anything; there was nothing in the stove at all except that——

Q. From your experience, you know that if there had been hot embers there you would have had this flare-up when you touched the match to the coal oil, don't you?

151 A. Maybe I would and maybe not.

Q. I say you knew so——

A. I say that maybe it would be a little flare-up, but it would not be any explosion.

Q. As a matter of fact, you know that the conditions are just the same if you heat the coal oil, that is, if you put the coal oil on hot embers and it becomes heated and generates a gas or vapor, that a match touched to that vapor has the same effect as a match touched to the vapor of gasoline, don't you?

A. No sir, it would not explode like gasoline.

(The court here took a recess until 1:30 o'clock this afternoon.)

Afternoon's Proceedings, Sept. 5, 1918.

OLE SANDANGER resumed the stand.

(Mr. McCord:)

Q. I want to ask you another question. I partially touched on it this morning, but I want to ask you a few more questions on this again. You came down here in July, 1917, from Cordova, did you?

A. Yes sir.

Q. And tell me the name of the man that you worked for first, or the company that you worked for, after you came down?

A. It was Mr. Clock. It was on a gasoline boat, on a purse
152 seine boat.

Q. Where is his place?

A. It is over in Tacoma: I don't know exactly.

Q. In Tacoma?

A. Yes sir.

Q. And where was the next place you worked, and for whom?

A. There was the first place I worked for a long time, you know.

Q. Tell me the people that you worked for from the time you quit in Tacoma and where was the next work you did?

A. Nilson's.

Q. Nilson's. Nilson's what?

A. Shipyard, Nilson & Kelez shipyard.

Q. Nilson & Kelez shipyard?

A. Yes sir.

Q. Have you worked for anybody else except that firm since you came down from Alaska?

A. No sir.

Q. How much money have they paid you since you came down from Alaska?

A. I don't know how much. There would be about $150.

Q. And you have worked for nobody else at all?

A. No sir, I haven't worked for anybody else at all.

Redirect examination.

(Mr. Arctander:)

Q. Clock was the one that owned this fish boat that you said you were out a couple of days on?

A. Yes.

Q. And didn't get any money for?

153 A. Yes.

Q. Will you please explain to the jury what you meant when you said, in cross examination, that after your dinner on the boat there—after your lunch, that you went ten or twelve miles off your course in hunting, explain to the jury how that was, whether you went ten or twelve miles out of your course or along the course with one or two points off, as you stated?

A. Well, it was about one point off, maybe, or so; the same way but only run different course on the compass, you know.

Q. But it was the same way that you were going along home?

A. It was the same way to Cordova, you know, but you see it was one point and a half or so off the course, instead of north——

Q. So that when you spoke of running ten or twelve miles off your course, you mean that for ten or twelve miles you went off about a point and a half on the compass?

A. Yes.

Q. From your regular course?

A. Yes.

Q. You didn't mean you wasted your time?
A. No——

Mr. McCord: I object to that as leading, Your Honor, and not proper redirect, and argumentative.

(Mr. Aretander:)

Q. When counsel asked you whether or not you wasted an hour and a half or two hours shooting ducks, and you answered yes to that, what did you mean?
A. Well, I mean we was running ordinary speed and then we were shooting ducks at the same time, running alongshore.
154 That is what I mean.
Q. Was there any waste of time there?
A. No, we didn't waste any time about it.
Q. You said that the sheet iron on that stove—counsel asked you in inches how thick it was, the sheet iron; I will ask you to state to the jury, looking at this back on an ordinary counting house pad—looking at that, the thickness of it, explain how the thickness of the sheet iron in the stove compared with that, whether it was thicker or thinner than that?
A. No, it was about the same thing.
Q. The same thickness?
A. The same thing as this, the same thing; not any thicker though.
Q. Not any thicker than that?
A. No, it was about the same.
Q. Will you tell the jury what distance there was from the bottom of the stove up to the lower edge of the door in the firebox?
A. It was about two inches, or two inches and a half.
Q. Two inches——
A. Two inches.
Q. —or two and a half?
A. Yes, about from two inches or—about two inches, yes, two inches or two inches and a half.
Q. About two inches?
A. Yes.
Q. Was it over two inches and a half at all?
A. No sir, it was not over two inches and a half.

(Witness excused.)

155 Mr. Aretander: If Your Honor please, I will offer in testimony now the deposition of Isaac Utness, taken at the offices of Messrs. Hadley & Hadley, before the reporter here, Mr. Richards, on the 4th day of February, 1918, at two o'clock. I think I will offer the whole of that. I have some other depositions in which I will offer the whole depositions, but read only at the present time what is proper in direct, because some of it may be in rebuttal. And if counsel will take this, I will read from the copies.

Mr. McCord: You can just as well put it all in. I will not raise an objection.

Mr. Arctander: Yes. Well, do you want me to put in what is for redirect too?

Mr. McCord: I would just as soon you would put it all in at one time as another.

Mr. Arctander: All right. We may do that.

Mr. Arctander here read from the deposition of Isaac Utness down to and including the following question beginning at line 18 on page 6 thereof: "During the season of 1916, what if anything had you had to do, while on board those like boats, in regard to starting fires in the stove and cooking the meals, during 1916?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that as irrelevant, incompetent and immaterial.

The Court: Objection overruled.

Mr. McCord: This is the year 1916, Your Honor, the year before.

Mr. Arctander continued the reading of said deposition down to and including the following question, beginning at line 4, page 7: "What kind of stoves did they have during 1916, compared with the stove that was on this boat No. 2 at the time of the accident?"

156 Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Counsel continued the reading of said deposition as follows:

"A. They had—it was cheap sheet iron stove.

Q. I ask you how they compared with the stove that they had on the No. 2 at this time, whether it was the same stove?"

Whereupon the following proceedings were had:

Mr. McCord: Same objection, Your Honor.

The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following question, beginning at line 5, page 8:

"Q. What was the fuel which was used for those stoves to cook on, during 1916?"

Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the question commencing at line 4, page 9:

"What was the condition of the wood when you had to use it, either in 1916, as a general thing, or these two days when you were out in 1917?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that part of the question referring to wood in use in 1916 as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following question, beginning at line 16, page 10:

"I will ask you what means, if any, was generally used during all of the year 1916, when you were there, while you were working for the company, in regard to starting the fire with the wood that you were furnished?"

157 Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following question and answer, beginning at line 21, page 11:

(Mr. Arctander:)

"Q. Was the same custom generally prevailing then when you were at this island down here working for the same company?
A. Yes, the same thing."

Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial, and move to strike out the answer.
The Court: Objection overruled.
Mr. McCord: Note an exception.

Counsel for plaintiff continued the reading of said deposition as follows:

"Q. Do you remember of any time, any occasion on which a different method was used to make the fire than pouring coal oil on, was there any different way?"

Whereupon the following proceedings were had:

Mr. McCord: Same objection.
The Court: Objection overruled.

Mr. Arctander continued the reading of said deposition down to and including the question beginning at line 17, page 22, as follows:

(Mr. Arctander:)

"Q. During your experience as a fisherman, how many times do you think that you have started fires on boats—in stoves on board a boat, with the aid of kerosene, by pouring kerosene over it, or seen others do it?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

158 Counsel for plaintiff continued the reading of said deposition down to and including the following question beginning at line 25 on the same page:

"I will ask you to state whether you ever saw any explosion caused by the use of kerosene in starting a fire when you have done or when others have done it, during your experience as a fisherman?"

Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

The reading of said deposition was here continued and concluded.

Mr. Arctander: I will now offer the deposition of John Jorgenson, taken at the same time—the other man who was in the boat.

Mr. Arctander here read from the deposition of John Jorgenson down to and including the following question beginning on line 20, page 40:

"What was the usual and general way in which the fishermen who had to light the fire in these stoves, or light the fire, what was the general and usual way, both those ten days and before, at other times, when you have been working in similar boats?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following, beginning at line 3, page 43:

"Q. Knowing what kind of fuel you had aboard that boat at the time of the accident, and at what time the dinner was cooked, and

the time when plaintiff, Ole Sandanger, went down to start the fire, and knowing the stove that was there, could you state whether or not at that time it could be possible that the stove could be hot?

A. Impossible."

159 Whereupon the following proceedings were had:

Mr. McCord: Objected to as irrelevant, incompetent and immaterial. The witness is not shown to be qualified. And asking for a conclusion.

The Court: I sustain the objection to it. The jury will disregard that last question and answer.

Mr. Arctander: I suppose I may give the answer. (Reading:) "The stove could not be hot at all. It was two hours afterwards."

The Court: The jury will not regard that, will not consider that answer, I say.

Mr. Arctander: Yes.

The Court: It is drawing a conclusion there which the jury are capable of drawing from the length of time and the character of the stove.

Mr. Arctander continued the reading of the deposition as follows:

"Q. Two hours after the fire"——

Whereupon the following proceedings were had:

Mr. McCord: I object to that.

Mr. Arctander (reading from deposition):

"A. After the fire was on, yes."

Mr. McCord: I object to that same question.

Mr. Arctander: That certainly is proper.

The Court: He has answered that already.

Mr. Arctander: I think he has, before.

The Court: He has answered that.

Mr. Arctander continued the reading of said deposition down to and including the following question beginning at line 10, page 44:

"How many times have you, during the time you have been fishing in these waters—while on board a boat, how many times have you made fires with kerosene?"

160 Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Arctander continued the reading of said deposition as follows:

"A. Must be thousands of times.

Q. And during your experience, have you ever seen any explosion caused by the use of kerosene in lighting a fire?"

Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.
The Court: Objection overruled.
Mr. Arctander: I will read it again. This is done for the purpose of interrupting the thing, ladies and gentlemen, and I will read now again.
Mr. McCord: I object.
Mr. Arctander (reading):

"And during your experience, have you ever seen any explosion caused by the use of kerosene in lighting a fire?

A. Never."

Cross-examination.

By Mr. Hadley:

The Court: Counsel, ladies and gentlemen of the jury, have a right to make objections to questions.
Mr. Arctander: That does not determine the motive.
Mr. McCord: I will let the jury pass on my motive, sir.

Counsel for defendant here read from the cross examination in said deposition down to and including the following question, beginning at line 25, page 48:

"Isn't it a fact that they didn't put the gasoline in that oil house until the fishing season began?"

Whereupon the following proceedings were had:

Mr. Arctander: I object to that as incompetent, irrelevant and immaterial.
161 Mr. McCord: This is cross examination. You must be forgetting yourself.
Mr. Arctander: I withdraw the question.
Mr. McCord: You can't withdraw it.
Mr. Arctander: I withdraw the question, Your Honor.
Mr. McCord: I won't allow it to be withdrawn.
Mr. Arctander: I will leave it to the court.
The Court: Read the question.
Mr. McCord (reading):

"Isn't it a fact that they didn't put the gasoline in that oil house until the fishing season began?"

The Court: Objection overruled.
Mr. McCord (reading):

"A. They put oil in that house long before the fishing season started."

(Short recess.)

The reading of the deposition of John Jorgenson was continued and concluded.

Mr. Arctander: I now offer the deposition of Emanuel Olson as far as it is proper in the direct case, and will indicate to the reporter what I omit in the reading. I think it would be better that Your Honor should not rule upon objections to what is in rebuttal without knowing what the defense may put in.

The Court: Very well.

Mr. Arctander here read from the deposition of Emanuel Olson down to and including line 16 on page 35 thereof.

Mr. Arctander further read from said deposition, beginning with line 16, page 36, and reading down to and including line 24 on page 38. Whereupon:

162 Mr. Arctander: Counsel, I don't know what you want with the cross examination. Will we now read that?

Mr. McCord: We will read that after you put in the balance of it.

Mr. Arctander: That is all that I will read from this witness.

The Court: You are saving this for the rebuttal, are you?

Mr. Arctander: I will save the rest for rebuttal.

Mr. McCord: Suppose you read the cross examination, all of it.

Mr. Arctander: All right. If there should be anything that fits on the rebuttal, we can mark it.

The reading of said deposition was continued down to and including line 29 on page 57, whereupon:

Mr. Arctander: That paper is returned. We will show that Plaintiff's exhibit "A" that is marked, but it ought to be marked different now.

Mr. McCord: It will go in as a part of the deposition, without re-offering it.

Mr. Arctander: Yes, but will the depositions go to the jury? They won't go to the jury. I suggest that we cut this off and make a special offer of it, if counsel admits that that is the paper that the witness marked.

The Court: The depositions do not go to the jury.

Mr. Arctander: No, that is what I thought. Have you any objection to cutting that off? We can agree that that is the paper. I suppose it is marked by the notary. I would like to have it marked Plaintiff's exhibit "E."

Mr. McCord: There is some more recross there.

Mr. Arctander: Is there? That is right. There is no ob-
163 jection to it being offered?

Mr. McCord: None at all.

Exhibit "A" attached to the deposition was detached therefrom and marked "Plaintiff's Exhibit E."

The reading of said deposition was continued and concluded.

Mr. Arctander: I now offer in evidence a portion of the testimony of Andrew Lund, starting at page 2, and I will give you a statement—I think there is a break.

Counsel for plaintiff read said deposition down to and including line 20 on page 7.

Counsel for plaintiff also read from said deposition, beginning with line 25 on page 8 and concluding the reading of the deposition.

Mr. Arctander: A stipulation was made by the attorneys and signed by them, that the affidavit of John Holland, subscribed and sworn to by him in the county of Wahkiakum, state of Washington, on the 27th day of May, 1918, before George F. Hanigan, a Notary Public residing at Cathlamet, Washington, may be offered and read in evidence by plaintiff at the trial of the above entitled action, either in direct or in rebuttal, with the same force and effect as if the statements in said affidavit contained were testified to and made by said witness John Holland under oath at the trial of said action, and with the same force and effect as if said statement had been made under oath by said John Holland on the taking of his deposition in said action, subject, however, to objection on the part of the defendant as to any of said statements so made in said affidavit by said witness John Holland that the same is incompetent, im-
164 material and irrelevant, provided, that such objection be made at the time the statements contained in said affidavit are offered and received in evidence at the trial of said action. It is further stipulated and agreed, that a portion of the statements made in said affidavit may be read during the time of plaintiff's presenting his case in chief and other portions when the plaintiff presents evidence in rebuttal at the trial of said action with the same force and effect as if said different statements had been contained in two different affidavits instead of in one.

Mr. Arctander here read from the affidavit of John Holland, as follows:

Q. That is what I want to know—you went up to Alaska, to Cordova, to this cannery?

A. Yes.

Q. To assist him?

A. Yes.

Q. To help be of assistance to him. What time did you leave here?

A. I left Seattle the 5th of April.

Q. Got there about what time?

A. Oh, I got there about the 10th.

Q. 10th of April?

A. Yes.

Q. Where was he then, with reference to being in the hospital or had he left the hospital?

A. He was out of the hospital then.

Q. He was out of the hospital then, and where did you find him?

A. Well, he was living at the cannery at that time.

Q. Living at the cannery——

A. Yes sir.

Q. —of the defendant's?

A. Yes.

Q. Now, you noticed, of course, as soon as you came there, his condition in regard to burns on his face and hands?

A. Yes.

169 Q. And leg and so forth?

A. Yes, when I saw him I couldn't hardly know him then when I first saw him.

Q. Had he had any of those scars or burns or marks when he left you?

A. No.

Q. No disfigurement on his face or on his hands?

A. No.

Q. Now, how long did you stay there with him and attend to him after you came up?

A. I stayed with him until we left for Seattle again.

Q. What time, about, was it, do you remember what time you came down here?

A. In July.

Q. In July?

A. Yes sir.

Q. You went down with him?

A. Yes sir.

Q. And you have lived with him ever since——

A. Yes sir.

Q. —up to the present. When you first came up there, what did you notice with reference to his eyes?

A. Well, his eyes were all red and inflamed, and the muscle under his eyes, they were all out of shape, his eyes was like that.

Q. With the lids turned down?

A. Turned down, you know. He had to push them up every day, you know, a couple of times a day, until he got that back.

Q. You noticed they were inflamed, red?
170 A. Yes.
Q. When you got there?
A. Yes.
Q. Did you notice whether or not he could use his eyes, whether he could see to read or anything with them?
A. No, he couldn't read.
Q. He couldn't read?
A. No.
Q. When you came down here or some time after he came down, did he go to an oculist?
A. Yes.
Q. On account of his eyes?
A. Yes.
Q. And received from him spectacles?
A. Yes.
Q. For his eyes?
A. Yes.
Q. State whether or not he has used them ever since?
A. He has used them ever since.
Q. Did he ever use spectacles before that time?
A. No sir.
Q. What have you noticed in regard to his eyes and eyesight since he came down and after he got the spectacles?
A. Well, he is a little bit better now, but at times he gets worse—when he reads he has to quit, you know, he can't read very much.
Q. Even now.
Q. Even now, no.
Q. Had he had any trouble with his eyes before—I don't know as I asked you that—before he was hurt?
171 A. No.
Q. How has his general health been since you came down from Alaska?
A. Been very bad.
Q. What seems to be the matter with him? When you first came up there, did you notice anything the matter with him?
A. Yes.
Q. In regard to his general health?
A. Yes sir, he was all scarred and sore all over.
Q. What?
A. He was all sore and his face was all sore and his hands were bad, he couldn't use them.
Q. Couldn't use them even to eat with?
A. No sir.
Q. Use a knife and fork?
A. No sir, I took care of him like I took care of a baby.
Q. And how was his health there when he did try to eat anything, after you came up there, how did that affect him?
A. Well, he was sick all the time and if he ate anything he was sick then too.

Q. Got worse?
A. Yes.
Q. Now, was that the case with whatever he ate, or was it any particular food?
A. Well, if I gave him meat or anything, he got worse. If I could give him milk or something like that, and eggs, then he was all right—not all right, but he was worse when he had meat.
172 Q. That was when you first got up there?
A. Yes sir.
Q. And while you were up in Alaska?
A. Well, it is still now too. If he eats meat he gets sick right away.
Q. He does?
A. Yes sir.
Q. Have you seen him spit up blood after he has been eating?
A. No, I haven't seen that, but I heard him complain about it.

Mr. McCord: Hold on.

(Mr. Arctander:)

Q. But you haven't seen it?

Mr. McCord: I move to strike that out.
Mr. Arctander: We don't object to that. That is all right.
The Court: The jury will disregard the answer about what she heard.

(Mr. Arctander:)

Q. When you were up there in Alaska and he would eat anything and become sick from it, how long would that last, would he get right over it or would it last for some days?
A. It would last for all the time that he would eat, but if he kept just to the food—milk and eggs, he was a little better.
Q. Now I say if you gave him anything that he got sick from, how long would that last, that he would be sick and feel exceedingly bad, more bad than usual?
A. Well, then he was sick for days afterwards.
Q. For days afterwards?
A. Yes sir.
173 Q. Now, after he came down here, did he go to any doctors, do you know?
A. Yes sir, he went to doctors.
Q. About what?
A. About his stomach.
Q. Before that I want to ask you: After he came down here and before he went to the doctor's, did he try to go to work?
A. Yes sir.
Q. What did he do? How many times before he went to the doctors did he try to go to work?

A. He tried to go to work about three times before he went to the doctor's.
Q. Before he went to the doctors at all?
A. Yes, sir.
Q. How long did he stay with his work at that time?
A. The first time he went out—he was going to do fishing—he stayed for about two or three days, two days I believe it was, and then he had to come back again.
Q. Then he had to come back again?
A. Yes.
Q. And the other two times before he went to the doctors, did he try to go to work—do you know where he went to work, tried to go to work?
A. Nilson shipyard.
Q. How long did he stay there before he had to quit?
A. He stayed there for a couple of hours and the- had to come home.
Q. Then he came home?
A. Yes.
174 Q. Now, the first doctor he went to was Dr. Torland?
A. Yes sir.
Q. And do you know the other doctor that he went to next after that?
A. I think he went to Dr. Leede after that.
Q. Leede, and then finally to whom?
A. Dr. Fick.
Q. He is the gentleman who has gone away?
A. Yes sir.
Q. Then he went to him, where did the doctor put him, did he keep him at home, or what did he do?
A. No, he told him to go up to the hospital right away; he couldn't even go home and take clothes with him.
Q. He couldn't go home and take his clothes with him?
A. No.
Q. Go right there?
A. Go right there.
Q. What hospital was that?
A. He was in a private home, in a sanitarium.
Q. In a sanitarium that Dr. Fick had?
A. Yes sir.
Q. How long did he stay at the hospital, under the doctor's care?
A. Stayed for three weeks.
Q. Three weeks; and after that what became of your husband?
A. He came home then.
Q. How was he then when he came home, or where was he, where did you keep him—up or in bed?
A. He was in bed for about three or four months afterwards.
Q. About three or four months afterwards?
175 A. Yes sir.
Q. And after that how was he?

A. Well, he got up then a couple of times a day, a couple of hours, and then he had to go to bed again.

Q. How long a time did that last?

A. Oh, that lasted for about three months afterwards.

Q. Three months more after he got up from bed?

A. Yes.

Q. When he was up in Alaska, had he had any work there before you came down?

A. What?

Q. Did he do any work up at Alaska before you came down?

A. Yes, he was watching a gate.

Q. Watching a gate?

A. Yes.

Q. That is all?

A. That is all he done.

Q. And after you came down here, how long before he could do any work? You said he tried these times, but didn't succeed. How long before he could do any work?

A. He went to work about the middle of June.

Q. About the middle of June?

A. Yes.

Q. Where?

A. Nilson shipyard.

Q. Has he worked there up to the present time?

A. Yes sir.

Q. How much of those two months and a half has he been working there?

A. Well, he has spent about two weeks every day since he
176 started to work.

Q. About two weeks of that time he has spent every day there?

A. Yes sir.

Q. How was it after he had worked there for a while, about his becoming sick and having to quit for quite a while?

A. Yes sir, he got sick once and he had to stay home for about two weeks.

Q. Two weeks at a stretch?

A. Yes sir.

Q. In bed?

A. Well, he was in bed most of the time that time.

Q. And after that time you say that it was only two weeks that he worked all the six days?

A. Yes.

Q. And the rest of the time how was it?

A. The rest of the time he went home one or two days every week.

Q. Do you know how much time he has put in, altogether, of those months and a half, working?

A. Well, I don't know exactly, but it has not been more than about a month and a half he has put in straight time.

Q. That he has put in working?

A. Yes sir.
Q. Before he went up to Alaska, how was his general health?
A. He was perfectly well.
Q. Perfectly well. Did he have any trouble to eat anything——
A. No sir.
177 Q. —before that time?
A. No sir.
Q. From what you saw about him during the time that you were down here after you came from Alaska and until he went to work in the shipyard about the 15th of June, would you tell the jury whether or not he was really able to do any work or not, from what you saw of him, his condition generally?
A. No, he was not able to do any work, because if he had I am sure he would have gone to work long before.

Mr. McCord: I move to strike out the last part of the answer as argumentative.
The Court: The jury will disregard the latter part of the answer.
Mr. Arctander: We will consent to that; that goes out.
The Court: It is purely argumentative.

(Mr. Arctander:)

Q. What did you notice about him when he tried to do anything, about the condition that he would then get into?
A. Well, he was nervous, he was shaking all over.
Q. Shaking all over?
A. Yes.
Q. How is it about that nervousness of his as to still lasting, to some extent?
A. Yes sir, he has still got that.
Q. Still got that?
A. Yes.
Q. Was he ever affected that way before he went to Alaska?
A. No sir.
Q. How is he now, at the present time, if he tries to eat
178 any meat?
A. He gets sick right away.
Q. Gets sick right away?
A. Yes.
Q. Much or little?
A. When he gets much sick he has to lay down right away.
Q. What is the only thing he can eat, you say?
A. Well, a little fish, and then I cook some rice and I have eggs and milk for him.
Q. And milk. Does he eat any vegetables?
A. Yes, a little.
Q. All kinds of vegetables?
A. No sir, just a few kinds.
Q. How about bread?
A. Well, I can give him some stale bread.

Q. Some stale bread?

A. Yes.

Q. If you give him much bread, what is the consequence, what happens?

A. He gets sick.

Cross-examination.

(Mr. McCord:)

Q. How do you happen to remember, Mrs. Sandanger, when he went to work in June?

A. Because I remember it. I was working at the same time myself.

Q. As a matter of fact, didn't he go to work on June 1st at the Nilson shipyard—what is it, Nilson and what?

A. Kelez, I think.

179 Q. Kelez & Nilson, is it?

A. Yes sir.

Q. Didn't he work down there from June 1st until June 29th and put in twenty-four days in the month of June? I will just call your attention to a memorandum, to refresh your memory, taken from their books.

A. Well, I don't think he went to work then.

Q. Well, are you certain of it? I want to ask you. You stated he didn't go to work until the 15th of June. I ask you to examine that memorandum, showing the days that he worked from June 1st to June 8th, four days, and want to know if you still want to adhere to your statement that he did not begin to work until the 15th of June, or are you mistaken about it?

A. Well, I know he went to work in June, but I could not exactly say if it was the 15th.

Q. You could not say whether it was the 1st of June or the 15th.

A. Well, I don't think he went to work the 1st of June.

Q. What is it?

A. I don't think he went to work the 1st of June.

Q. Well, I will just ask you if you can look over that memorandum, showing the statement of his time, and ask you if that will enable you to refresh your memory. I don't want you to be mistaken as to your statements as to the time he went to work.

A. No, I don't remember exactly.

Q. Examine the statement also and see if he did not work from the 1st of June until the 31st of August, seventy-one and fifteen-sixteenths days? You said he only worked about six weeks.

180 Now, as a matter of fact, didn't he work seventy-one days out of the three months?

A. Well, I know that he has been sick in the time that he has worked and laid up for two weeks and in those times he put in about two weeks straight shift every day.

Q. Do you know how much money he has received?

A. No sir, I don't exactly know that.

Q. Hasn't he received $4 a day?

A. Yes.

Q. Or $288.65 since the 1st of June. Look at that item and see.

A. That is what it says there. Of course I don't keep track of the check. They have gone out as fast as they came in.

Q. You are just positive from memory. You are giving the best recollection you have of it, but you don't pretend to be absolutely accurate, to you, as to the number of days that he worked?

A. I could not exactly say the number of days that he has worked.

(Witness excused.)

Mr. Arctander: Preliminary to calling Mr. Sandanger back for a couple of questions, I want to offer in evidence Regulation 11 of the Department of Commerce in regard to life preservers. Your Honor, I offer it for this purpose, to call your attention to the Act of Congress of the 9th of June, 1910, Section 5, "That every motor boat subject to any of the provisions of this Act, and also all vessels propelled by machinery"——

181 Mr. McCord: Wait just a moment.

Mr. Arctander: I am just calling attention to the Act of Congress.

Mr. McCord: I know it. I object to that. I don't think it is proper practice to introduce acts of Congress in evidence. That is a matter of law that the court takes judicial knowledge of, and it is not for the jury to be advised, as a matter of evidence, as to what the laws of Congress are, any more than it is proper for them to be advised of what the laws of the state of Washington are. For that reason, I object to counsel reading it.

The Court: I think that is correct. I take judicial notice of the acts of Congress.

Mr. Arctander: I understand so, but I wish to call your attention——

The Court: It is my duty to instruct the jury as to what the law is.

Mr. Arctander: What?

The Court: I say it is my duty to instruct the jury as to what the Act of Congress is.

Mr. Arctander: I only wanted to call Your Honor's attention to the provision in that section which would make it proper to introduce the rules and regulations of the Department of Commerce, because it calls attention to that, that they shall carry either life preservers or——

The Court: You are only calling my attention to this as preliminary to the introduction of the regulations?

Mr. Arctander: Yes, that is all. It says they "shall carry

182 either life preservers or life belts or buoyant cushions or ring buoys or other device to be prescribed by the Secretary of Commerce and Labor, sufficient to sustain afloat every person on board, and so placed as to be readily accessible." That is the statute, and then it is with reference to that other device to be prescribed by the Secretary of Commerce and Labor; upon that subject that I call

your attention to it, to show what Rule 11 is in that regard—in regard to life preservers.

Mr. McCord: I object to the question of the regulations, Your Honor, for the reason that they are incompetent, irrelevant and immaterial. It does not show when the regulations were adopted, or whether they were in force at that time or not.

Mr. Aretander: November 15, 1912, is the date of the circular. It is the last circular that there is upon it.

Mr. McCord: I don't think that the regulations have the force and effect of law, not made so by the statute; and, if it is a violation of the federal law that counsel is contending for, the breach of the regulations would not be a ground of negligence, it would not be a breach of the law.

The Court: Let me look at that, Mr. Aretander.

Mr. Aretander: That is Section 11. Counsel does not object to it because it is not the best evidence of the regulation, as I understand.

Mr. McCord: No, I have no objection on that ground. I am willing to concede anything that counsel can prove, without making him prove it in a technical way.

The Court (after examining): I will overrule the objec-
183 tion. I understand you are not questioning the form of the evidence?

Mr. McCord: I have no objection to the form.

The Court: Because it is not certified.

Mr. Aretander: I will read Rule 11 of the secretary of the Department of Commerce and Labor of the United States:

"11. Every motor boat not carrying passengers for hire must have life preservers or life belts or buoyant cushions or ring buoys or other device, which should be of types approved by the Board of Supervising Inspectors, sufficient to sustain afloat every person on board. This includes members of the crew, children, and babies.

"In addition the Department authorizes life preservers and buoyant cushions for motor boats not carrying passengers for hire under the following conditions: Each life preserver or buoyant cushion shall be capable of sustaining afloat for a continuous period of twenty-four hours an attached weight so arranged that whether the said weight be submerged or not there shall be a direct downward gravitation pull upon such life preserver or cushion of at least 20 pounds. If a buoyant cushion is furnished for more than one person, its capacity must be proportionately greater.

"No such life preservers or buoyant cushions stuffed or filled with granulated cork or other loose granulated material and no pneumatic life preservers or cushions will be approved.

"Planks, gratings, floorings, *oars*, small boats in tow, etc., are not approved as substitutes for life preservers, life belts, buoyant cushions or ring buoys, but wooden life floats may be used, provided their dimensions shall not be less than 4 feet in length, 14 inches in breadth, 2 inches in thickness, and made of well-seasoned white pine, or of any other wood not exceeding white pine in weight per cubic foot.

"Samples of other substitutes for the articles mentioned must first be submitted to the Supervising Inspector General, Steamboat-Inspection Service, for examination and approval."

184 OLE SANDANGER, the plaintiff, being recalled, testified as follows:

(Mr. Arctander:)

Q. Mr. Sandanger, you stated before, in your direct examination, that there were no life preservers on board that boat. I will ask you if there were any life belts?

A. No sir, there was no life belts.

Q. Were there any buoyant cushions?

A. No, sir, there was nothing of that kind.

Q. Or any ring buoys?

A. No sir.

Q. Was there any wooden float not less than four feet in length, fourteen inches in breadth, two inches in thickness——

A. No sir.

Q. And made of well-seasoned white pine, or any floats at all?

A. No sir, there was nothing, nothing at all.

Cross-examination.

(Mr. McCord:)

Q. There was a plank thrown out, that you could get onto, wasn't there?

A. What is that, sir?

Q. I say there was a plank about two inches by six, wasn't it—6 by 2? A plank, I say?

A. No.

Q. Thrown out. How big was that?

A. 2 by 6.

Q. A 2 by 6. How long was it?

185 A. I don't know, about 10 or 12 feet long.

Q. You testified a moment ago, or yesterday, the other day, and your wife this morning. I will call your attention to a memorandum showing the time that you worked or were supposed to have worked for this shipbuilding company, Nilson & Kelez's shipbuilding plant, in Seattle, and ask you to examine that and see if you desire to change your testimony as to the time that you worked and the money you received for that work, from the 25th of May on down to the 31st of August. (Handing paper to witness.)

Mr. Arctander: If you got that from them, we will concede that that is the correct thing. Of course he has only stated in a general way.

A. Yes, I worked in June, that is right.

Q. What is that?

A. I start to work in June; that is what I said.
Q. May 25th. Look at it. May 25th.
A. Then I worked—I was laying off about two weeks.
Q. You commenced May 25th, didn't you, according to that statement?
A. The first of June.
Q. May 25th, six days up to May 25th?
A. No.
Q. Well, don't you see there $24 paid you on May 25th, for six days' work? Is that right or not?
A. No, that is not—I didn't start to work before June.
Q. Well, you received $24 on May 25th, didn't you?
A. Not as I know of.
Q. Well, did you or did you not? You swore the other
186 day that you didn't begin to work until June. Now if that statement is correct you worked six days prior to the 25th of May and received on that day $24.
A. No sir, I didn't receive any $24 in May.
Q. Then you say——
A. I started to work the first of June.
Q. You say you didn't work prior to the first of June?
A. Yes sir.
Q. Then how did you get the $24 from them?
A. Well, I don't know. I don't think I got $24, as far as I know.
Q. Well, not so far as you know. I am asking you now to testify as to the fact, not your——
A. That must be a mistake.
Q. What?
A. I say that must be a mistake some way, because I
Q. You didn't do that?
A. No, I didn't work in May.
Q. Will you inquire on their books and see whether you received that money, during the noon hour, from Kelez's yard—see whether you did or not?
A. No, I didn't receive any money in May, because I was not working.
Q. Well, suppose the books show you worked and received the money, then you would be mistaken?
A. Well, it would be a mistake of them then, because——
Q. You now testify that regardless of what their books show you did not work in the month of May; is that right?
A. Yes sir, I didn't work in the month of May.
187 Q. Didn't work any time during the month of May?
A. No sir, I didn't.
Q. Then on June 1st—between June 1st and June 8th you got $16, didn't you?
A. Yes sir. That is right, I started to work on June 1st.
Q. Then during that whole time shown by that statement you worked seventy-one and fifteen-sixteenths days, didn't you?
A. The first time?

Q. Well, I say between the 25th of May——

A. I worked from the 1st to the 8th and then I laid off from the 8th to the 15th.

Q. I am asking you to examine that statement and tell me whether it is correct or not, if you didn't work, up until the 31st of August——

A. I didn't really receive so much money as that, $288.

Q. You didn't?

A. No sir; I know that for a fact.

Q. How did they pay you?

A. Well, they paid me—I guess paid me check, the same as the rest.

Q. They paid you in checks. You took the checks and endorsed them, did you?

A. Lost them? No, I cashed them, because I needed the money.

Q. Then this statement is not correct, is it?

A. I didn't work in May.

Q. You didn't work seventy-one and fifteen-sixteenths days between the 25th of May and the 31st of August, did you?

A. And the 31st of August?

188 Q. Yes, you didn't work——

A. Well, I worked——

Q. I say, you didn't put in seventy-one and fifteen-sixteenths days, practically seventy-two days, between the 25th of May and the 31st of August?

A. Not so far as I know.

Q. I am not asking you so far as you know; I am asking you for the facts.

A. No, I didn't work in May.

Q. Did you work seventy-one days between the 25th of May and the 31st of August? I will put it that way.

A. Between—what do you mean?

Q. You know what the English language means, don't you? Between the 25th of June—up until the 31st of August—25th of May——

A. That I was steady, do you mean?

Q. I don't mean that. I mean did you put in seventy-one days?

A. Seventy-one?

Q. Yes.

A. I don't know exactly how many days, but I didn't put steady, I was laying off every week one or two days.

Q. Would you say that you didn't work seventy-one days there?

A. No, I don't think I worked seventy-one days.

Q. I am asking you what the fact is. Did you or did you not work seventy-one days?

A. I worked about six or seven weeks in that time.

Q. That would be then—six or seven weeks would be about half—about forty-two days, then, you put in, did you?

189 A. Well, between forty and fifty days.

Q. Between forty and fifty days?

A. Sixty days.

Q. As a matter of fact——

A. I couldn't say exactly.

Q. —if you received $288.66, you worked more than seventy-one days, didn't you, during that same period of time?

A. Well, but I didn't receive so much as that.

Q. They didn't owe you anything else except for your wages, did they—that shipbuilding company?

A. Well, they didn't.

Q. All the money that they paid you was for your wages, wasn't it?

A. I guess so, that is all.

Q. Now then, during that time between the 20th of May, when you began to work, according to the books, and the 31st of August, there were fourteen Sundays and two legal holidays—Decoration Day and the Fourth of July—eighty-eight working days between the 20th of May and the 31st of August, and out of those eighty-eight days you put in seventy-one and fifteen-sixteenths days and received the money for it, didn't you, $288?

A. I didn't start to work in May.

Q. I say that you received $288 from them?

A. I don't think so, because I haven't counted exactly the checks, but I know I——

Q. So you were just estimating it, rather than testifying from any accurate records, were you, you just were guessing at it, weren't you?

A. Sure, I guess I haven't——

190 Q. If you worked seventy-one days, and you say you worked forty or fifty, then you were just guessing, weren't you, you just estimated?

A. I am sure I haven't received so much money as that when I have been working.

Q. How much did you receive? If you didn't receive $288.66, how much did you receive?

A. Well, I guess about between one hundred and fifty and two hundred dollars I must receive then and—I don't know exactly what money, because I haven't got the checks.

Q. So you are not trying to testify exactly, are you, then?

A. No.

Q. You are just guessing at it?

A. No, I am not trying to say just exactly, because I haven't counted every check, and every dollar.

Q. There is quite a difference between $150 and $288?

A. Yes, I suppose so.

Q. Can't you estimate it any closer than that?

A. Well, I can't guess any closer than that.

Q. You think that is pretty accurate, do you?

A. Yes, that is what I received.

Q. Has your other testimony been as accurate——

Mr. Arctander: I object to that as improper.

The Court: Objection sustained.

(Mr. McCord:)

Q. How long was this boat that you were on, did you say?
A. About 28 foot, 28 or 29 foot; 28 foot 6 inches, I guess.
Q. A little bit of a boat, wasn't it—a fishing boat?
A. No, that is a pretty good sized fishing boat, three ton.
191 Q. That is the kind you worked on?
A. Yes sir.
Q. And I believe you stated you were one of the crew, didn't you, this day?
A. How is that?
Q. You were one of the crew on the day you were hurt, were you?
A. Yes, sure, I was one of the crew, yes.
Q. And you went up there to Alaska, did you, to work on boats like that?
A. Yes, I was to fish by boat like that.
Q. That is what you hired for?
A. Yes.
Q. To work on boats like that?
A. Well, I was hired to work—they could put me in any kind of a boat that they want to when I came up there, after the fishing season started.
Q. Put you on any boat that they wanted to put you on?
A. Yes, they could put me anywheres that they wanted to.
Q. And you got your regular pay, did you?
A. Well, I don't know——
Q. For that service—I say, you got your pay for your work, didn't you?
A. I didn't get any settlement, so I don't know if I get all I got coming. I don't think I have got all I have coming.
Q. I say you were paid for working on the boats and working everywhere, you were paid $60 a month and your board?
A. I was paid $60 a month.
192 Q. And your board too?
A. Yes.
Q. That is what you earned?
A. That is what our agreement was down here.
Q. Was that agreement in writing?
A. Yes, it was in type.
Q. In writing?
A. Yes.
Q. Where is your agreement?
A. How?
Q. Where is that agreement, have you got it?
A. The agreement, I guess the union—Alaska Fishermen's Union have that agreement.
Q. You signed for——
A. I signed up in the office of the Carlisle Packing Company.
Q. Signed up——
A. I suppose Carlisle Packing Company got the agreement yet.

Q. You signed up for fishing and working on the boats and catching fish during the entire season?

A. Yes. I was signing up for to go to work in the cannery before the season, $60 a month, and then when the fishing season commenced we would fish until fishing season was over.

Q. Yes. And they were to furnish the bait and you were to catch the fish?

A. Yes.

Q. And you were to get a certain percentage?

A. Yes.

Q. You did get your percentage, didn't you? I say, you
193 did get your percentage, didn't you?

A. I didn't get any settlement with them on the fish, because I was down to the office two or three times before I went in the hospital and then asked Hawkinson how much the fish was, and then he told me—I think the average was a hundred dollars, and then I asked him that is pretty near a hundred dollars because there was nobody had less than $300 fish, and then he said that maybe $200, he said, and then he asked me next day to come up there, and wanted a settlement, and then I went down to the dock and got sick and then my wife went out about two or three days afterwards and she got $125 on a check, and that is all she got, that is all the settlement I got.

Q. You got your full pay for the season, didn't you?

A. Well, I don't know about that I got my full pay for the season, what I did have coming, because I should have $60 a month for about three or four months before the fishing season started and then I should have the average of the fishing season.

Q. The company paid your hospital bills?

A. Yes.

Q. And doctor bills?

A. Yes.

Mr. Arctander: We admit they paid them.

(Mr. McCord:)

Q. They paid your hospital bills and doctor's bills at Cordova, didn't they?

A. They paid the doctor, yes, in Cordova. There was an agreement every man who get hurt or sick, they supposed to get the
doctor and the hospital. That is an agreement there is
194 down in the fishermen union, but the company didn't——

Q. They paid all your doctor's bills and hospital bills at Cordova, and have paid all your other expenses except the doctors' bills that you have incurred down here, haven't they?

A. Well, when I was watching gate, I paid my own grub; food.

Q. The total amount of bills that you incurred was about $175, wasn't it, down here?

A. How?

Q. I say the total expense that you incurred down in Seattle amounted to $175, you say, didn't you?

A. One hundred and seventy-five?
Q. One hundred and seventy-five.

Mr. Arctander: It is two hundred and five.

A. 205. The check I got from Cordova, do you mean, before I came down here?
Q. Yes.
A. That was $250 I got in the check.
Q. But I say the total amount of the bills that you incurred for medical attendance down here amounted to something like $200, $205?
A. Yes sir. Sure. And then still I have been—maybe there is some more too, because I have been going to our doctor and paid some small amount.
Q. You only claim $175 in the complaint; that is all you ask for, isn't it?
A. Yes, that is all I ask for.

(Witness excused.)

(Mr. McCord reserved the right to offer statement as to time worked by plaintiff, and amounts received.)

195 PETER ERLENDSEN, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. Arctander:)

Q. Mr. Erlendsen, where do you reside?
A. At Fletcher Bay, Kitsap County.
Q. Over on Bainbridge Island?
A. Bainbridge Island.
Q. What is your business now?
A. Well, I am living out there; that is my home; I am making my home out there.
Q. Oh, yes. You are retired?
A. I am retired, yes. Of course, occasionally I do something in my line, just privately, for myself.
Q. I will ask you whether or not you have studied, have taken a course in analytic and manufacturing chemistry anywhere, and, if so, where?
A. I have taken a three-year course in Norway, at the technical college in Trondhjem.

(Mr. McCord:)

Q. Where?
A. At the technical college in Trondhjem, Norway.
Q. You say you took a three years course?
A. Yes.
Q. Did you ever graduate from that college as an analytic and manufacturing chemist?

A. In 1887.

Q. In 1887?

A. In the spring.

Q. Have you had any practical experience being employed in the business of analytical and manufacturing chemistry anywhere, and, if so, for how long a time and where was it and between what

196 years?

A. In Minneapolis, for the Minneapolis Gas Light Company, from 1894 to 1898.

Q. Four years?

A. For four years.

Q. State whether or not you were the analytical chemist in charge of their chemical laboratory, testing laboratory, during those four years?

A. I was.

Q. When you left there you came over here, I understand?

A. Yes.

Q. With your sick wife?

A. Yes.

Q. You resigned and came over here on account of your wife's health.

A. (Witness nods in the affirmative.)

Q. And since that time, when you have been living here, have you been engaged more or less in private experiments in connection with the business of analytic chemistry?

A. I have. In 1908——

Q. You need not specify. You have, more or less, since that time?

A. I have.

Q. At your own private laboratory?

A. I have.

Q. While you were there engaged those four years and you were the chemist of the Minneapolis Gaslight Company, state whether or not your business was in regard to testing—what objects were you testing?

A. Well, I had to test always anything that came around

197 from crude oil, which we used in the manufacturing of water gas, that is, to fractionate the water gas or the illuminating gas from.

Q. As loudly as you can.

A. Coal tars, gas for any purpose, for my own private individual experience.

Q. Amongst other things, was it your business to test crude oil that was delivered?

A. It was.

Q. Crude oil contains—what does crude oil contain, the main substances?

A. It contains all the hydro-carbons from the marsh gas up. Of course marsh gas and ketones——

Mr. McCord: I object to the question, Your Honor, as not a

proper qualifying question. He can tell his experience without going into the ingredients of crude oil. I don't think that has anything to do with his qualifications.

Mr. Aretander: I don't care to go into everything else.

(Mr. Aretander:)

Q. State whether or not it contains—what oils it contains, gasoline, kerosene——

A. It contains all the oils, the crude oil contains all the oils from the lower boiling point tractions up to the solid paraffines.

Q. To the solid paraffines. What does it contain of oils, ordinary oils?

A. Gasoline, distillate, kerosene—gasoline and distillates and kerosene.

Q. Now, what if anything did you have to do about crude oil there?

198 A. In order to make my test of fractional distillation—I subjected the crude oil to fractional distillation.

Q. And how often did you have to do that, how often did you have to examine the tank, about, when you were there, of crude oil?

A. To the best of my recollection now, it came in probably two or three—in the winter time when we used the most, about two or three times—tanks, that is, it came in——

Q. Tanks of crude oil?

A. Crude oil, yes.

Q. What was your object of your testing every one of them, why did you do it?

Mr. McCord: I object to that as not a proper qualifying question.

The Court: Objection overruled.

(Mr. Aretander:)

Q. What was your object?

A. To investigate if it came up to certain standards. I don't know the standards that they had or the agreement with the oil companies in Minneapolis Gaslight Company. I turned in the results of my investigations, and of course they settled between them, I had nothing to do with that part.

Mr. McCord: I object. I can't understand a word he says.

The Court: It *is* a little difficult to understand. Talk as plainly as you can.

Mr. McCord: You will have to talk a little slower.

(Mr. Aretander:)

Q. You haven't any tobacco or anything in your mouth, have you?

A. No.

199 Mr. McCord: I can't catch a word he says. It just all balls up.

The Court: If the jury don't understand, he may repeat it.

(Mr. Aretander:)

Q. Now, you say that the oil companies in the East furnish the gas company in Minneapolis with so much crude oil?

Mr. McCord: I object to the custom of the Minneapolis Gaslight Company, Your Honor——

The Court: It is to show his experience?

Mr. Aretander: That is all, only to show what experience he had.

(Mr. Aretander:)

Q. And, in order to see whether or not the oil they furnished was up to the test, you made these——

Mr. McCord: I object to that. That is leading, Your Honor.

Mr. Aretander: Can't you let me ask a question?

Mr. McCord: I object as leading.

(Question read.)

The Court: Objection overruled.

Mr. Aretander: I didn't finish the question.

Q. (Continuing:) —in order to find out whether the different shipments made by the oil companies—or I will waive that, I won't ask a leading question.

Why did you make each of these tanks of crude oil—why did you make these fractional distillation tests that you speak of? Why?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

(Mr. Aretander:)

Q. Go ahead.

200 A. I made these tests because I was requested to make them, as they wanted to find out whether those oils was up to certain standards.

Q. Yes.

A. I have answered that before.

Q. And how many did you say of these tanks you examined a week, on an average?

A. To the best of my recollection, during the busy reason in the winter time there would come up two or three tanks a week.

Q. Two or three tanks a week. In order to determine what this crude oil contained, what did you do, how did you separate the different oils?

A. By fractional distillation.

Q. Good gracious! We don't know what fractional distillation is. What does it mean, what did you do?

A. Well, the distillation, you take the crude oil, put it in your retort and put your thermometer in to determine the temperature, and when it evaporates you pour off the distillate and quit the distillation at every point and change the receivers. In fact, then you can separate it into certain fractions in certain boiling—that is, certain temperature at which it boils.

Mr. McCord: I move to strike out that answer as irrelevant, incompetent and immaterial.

The Court: I do not think it is necessary to go into the details of what he did.

Mr. Aretander: I didn't want him to go into detail there. I just want to know whether or not in this retort, in order to distill
201 those different things, are they subjected to that—that retort?

A. Of course it is subjected to heat.

(Mr. Aretander:)

Q. How did you get the difference—for instance, the gasoline off?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Aretander: Did Your Honor say sustained?

The Court: Sustained. It is pretty interesting, but I do not think it is material in the case.

(Mr. Aretander:)

Q. Well, in making this test and in subjecting this retort to certain heats, whatever was taken off from it, was it in the shape of gas or was it liquified?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial, going into all of the details. I don't think it has anything to do with it.

The Court: I really think he has shown himself qualified to testify as an expert witness without any more, Mr. Aretander. I suppose your object is to show whether he is qualified to give an expert opinion on this subject.

(Mr. Aretander:)

Q. I will ask you to state, then, whether or not either gasoline or kerosene oil are strictly explosive, in the strict term are they explosives?

A. They are not explosive compounds nor explosive mixtures in the true sense of the word, or scientific sense.

Q. How do they get so as to explode, either one of those oils, how, in what manner do they get explosives?

202 A. You can't make an explosion except you vaporize them and mix them with oxygen or air which contains oxygen, which makes them combustible, and at a time when they are ignited of course, they almost instantly combust the whole thing, and increases the volume of the air surrounding it by the great heat.

Q. Then it is the vapors of them that——

Mr. McCord: Will you not talk a little more slowly so that I can understand?

The Court: Talk more slowly, so that we can understand you.

(Mr. Aretander:)

Q. Oils themselves are not explosive while they are in the condition of oils?

A. No.

Q. It has got to be vaporized in order to make it an element of explosives?

Mr. McCord: I object to the question as leading, Your Honor.

Mr. Aretander: I will admit that.

The Court: I think he has already testified to that.

Mr. Aretander: I think probably he did.

A. I testified to that question.

Mr. Aretander: I wanted to make it plain.

(Mr. Aretander:)

Q. Now then, the first thing, then, in regard to the temperature which is required to produce the vapors from kerosene oil or coal oil—I suppose that is the same thing, isn't it——

A. Yes.

Q. —and from gasoline? Is there any difference in the temperature in order to get them to evaporate, to make gases?

203 A. A great deal of difference.

Q. Now kerosene—in order to get gases created or vapors created from kerosene, how much of a temperature must you have in heating it?

A. Gasoline——

Q. No, kerosene?

A. Kerosene I am referring to, will in fact evaporate at any temperature, in very limited quantities, in such limited quantities that they will not explode. In order to form an explosive mixture with air——

Q. You are speaking about kerosene and not about gasoline?

A. Yes.

(Answer read.)

Q. Now, state it to the jury.

A. The temperature has to be increased to approximately—in open air, in an open vessel, where it has a chance to circulate, to approximately two hundred degrees, or above two hundred degrees Fahrenheit.

Q. Two hundred degrees Fahrenheit. How does two hundred degrees Fahrenheit compare with boiling temperature at which you would boil water?

A. Boiling water in 212.

Q. That was in open air?

A. That is in open air.

Q. In an open vessel?

A. Open.

Q. Like any stove?

A. Stove.

Q. Suppose it is a confined vessel in which kerosene is, if it is confined into a receptacle like a can, is there any difference in regard to at what temperature it will throw off vapors?

A. There is no difference in the throwing off of vapor, but in a closed can it may, because of the limited space—may have a chance to diffuse with the air better and possibly form an explosive mixture at a lower temperature than it would in the open.

Q. About what would be the limit to that downwards?

A. From my experience I would say 25 to 30 degrees lower.

Q. To how much?

A. From 25 to 30 degrees lower than the 200.

Q. Lower than the 200?

A. Yes; that would be run 170 to 175.

Q. Now, what time will it take for kerosene to form enough of such vapors as to make it explosive at either one of these temperatures that you have mentioned? About how long a time has it got to be exposed to that temperature before the gases will form in sufficient quantity so as to cause an explosion, when mixed with the air and when a match is put to it?

A. The time, of course, is not a question. There is a question of how much of it it will produce fast enough to have a chance to diffuse into the air enough to form the explosive mixture, and in a case where the air is quiet, that it is not moving away, it might not take over seven to eight minutes.

Q. From seven to eight minutes?

A. Yes.

Q. But it would take that long to form enough to form an explosive substance with the temperature you have mentioned?

A. Well, explosive, yes.

Q. Now, how is it with gasoline, in what time or at what heat—what heat is required to make vapors from gasoline, which will form an explosion, when coming in conjunction with the air and ignited will cause an explosion?

A. About 45 or 50 degrees Fahrenheit.

Q. 45 to 50 degrees. That is in an open enclosure, like an open stove, that has been mentioned here?

A. Open room or——

Q. How long a time would it require for the gases to develop in such quantity, as far as gasoline is concerned—you said kerosene even to eight minutes—how long will it take for gasoline to develop?

A. Gasoline—the specific gravity in comparison with air—of gasoline—is very much lower than kerosene, it takes a very much shorter time for it to raise up enough to diffuse.

Q. I understand, but what time does it take?

A. Oh, depending on the heat; but at the temperature of 50 or 60 degrees, or in that temperature that I have mentioned before, it probably would take from a half a minute to one minute.

Q. From a half a minute to one minute. At the temperature of from 45 to 50 degrees?

A. Yes.

Q. In the open.

A. I want to qualify that answer: If it is an open place where the air would pass over it, of course, and blow all the vapors away,
206 that would be entirely different. This is supposed to be in a room where the air is fairly quiet.

Q. Like you heard the testimony here that it was in the forecastle of a boat?

A. Yes.

Q. Which was closed except there was a hatch here at the back end. Now, in such a place, what would you say was the temperature that would be required——

A. About the same as I have stated.

Q. —at the time, up in Alaska?

A. I have stated the temperature, that is in reference to——

Q. That is the temperature that would be there. Now, if the stove in this case was cold and the contents of the stove was cold, and the stove was situated in a room like the forecastle of this boat, and gasoline was poured into the stove or onto the wood lying in the stove, would gases be produced—gases or vapors be produced sufficient to make an explosion, when mixed with the air and ignited—if the stove was cold and the contents cold and in such a forecastle as we have mentioned here?

Mr. McCord: You are referring to gasoline now, are you?

Mr. Arctander: Yes, with gasoline, yes.

A. It would.

(Mr. Arctander:)

Q. Form enough vapors?

A. It would.

Q. It would?

A. Even if the room was down to below 40, if there was
207 given plenty of time, that is, time enough for it to diffuse——

Q. Yes.

A. It eventually would form enough to make an explosive mixture.

Q. Even if the stove and the contents were cold?

A. Entirely cold.

Q. How would that be with the same condition as to the stove and the contents and the place in which the stove was situated, if it was kerosene that was poured on that, instead of gasoline?

A. It would absolutely not evaporate enough to form an explosive mixture.

Q. It would not?

A. No sir, absolutely not.

Q. If there was burning embers in the stove at the time that this stuff was poured onto it, and if it was kerosene that was poured, what heat would be necessary in the stove to cause gases enough from the kerosene to evaporate and form an explosion?

A. That depends on the quantity of the embers and the quantity of the hot material.

Q. Yes.

A. I don't know anything—the heat of that, if it was just a small ember, it would be cooled off, and because of the lack of heat that would be required to evaporate that kerosene, it would not evaporate enough, but if there was a large amount of it, or large amount of any other substance in the stove, that was hot enough, then of course it would.

Q. If it was hot up to 200 degrees Fahrenheit——

208 A. 200 degrees or more.

Q. —in that case, would you say that that kerosene would not or that it might explode?

A. It would if it was down to the 200. It would not form what we will call an explosion that would make a sudden flame, but not with great volume, unless there was a long time given for it to diffuse, and if the room was cold—the surrounding room was cold, it is apt not to be able to retain itself in the form of a vapor. It might condense.

Q. Well, it might then form a flame and it might not?

A. It might not.

Q. Depending upon the length of time from the time it was poured in until it ignited?

A. And other physical conditions which I may not know anything about.

Q. You have heard all the testimony in this case, have you not?

A. Yes sir.

Q. I will ask you whether or not, if that testimony is true, what took place there in that cabin was an explosion or merely a flame-up, as you speak of here?

Mr. McCord: I object to that, Your Honor, as not a proper hypothetical question.

The Court: Yes. If he objects to it, you will have to put the hypothetical question to him.

Mr. Aretander: I said, supposing all the testimony in this case was true.

The Court: Yes, but he may understand the testimony different from what somebody else does. You have to put it in concrete form so that we will know just exactly what he is answering.

209 Mr. Aretander: Well, I will have to have time to put a hypothetical question.

The Court: Well, we will take a recess and give you a little time. Counsel objects to it and he has a right to do so.

Mr. Aretander: The jury has heard the testimony and he has heard the testimony which is given here, almost all of it in writing.

The Court: Well, suppose the jury go out and there will not be any two of them who will agree that the testimony is exactly the same.

Mr. Aretander: Probably not.

The Court: The attorneys will not agree, I am sure, when they come to argue the case. You have got to give a hypothetical question so that the jury will know exactly what the question means, and the witness will know.

Mr. Aretander: I will try to form my hypothetical question, if counsel insist upon it.

(Short recess.)

(Mr. Aretander:)

Q. Supposing it to be a fact proven in this case, and to be true, that pieces of wood were placed in the stove in the forecastle of a boat, that right afterwards there were poured a small quantity of oil from a can on the wood, and then, right after, a match was lit and dropped in the stove, and that either as the burning match reached the wood or before it reached it, there was a strong report and

210 a sound like when the wind blows the hardest around the corner, and immediately flames shot up from the stove with such force as to set on fire the clothes of the plaintiff, who was attempting to make the fire in the stove, and to burn his face and eyebrows, and so as to explode the can containing the oil, so that it was found afterwards on the floor lying in many pieces, and this can was held from one to two feet from the stove and immediately above it, and also with such force as to throw plaintiff over towards the bunk on the other side of the stove, and so as to further burn the hair of a person standing from four to six feet away from the stove and to hurl him up through the hatchway, state whether or not in your opinion there was at that time in that cabin an explosion, or merely a flare-up, such as has been mentioned by you a little while ago?

Mr. McCord: I object to the question as incompetent, irrelevant and immaterial. It is not a proper hypothetical question, not containing the necessary elements upon which a conclusion or opinion may be based.

The Court: Objection overruled.

(Mr. Aretander:)

Q. What in your opinion—taking those facts to be true, was it an explosion that took place, or flare-up there, such as you mention, or flame-up?

A. It would be an explosion—open-air explosion.

Q. An open-air explosion?

A. Yes.

Q. What do you mean by open-air explosion?

A. Well, an explosion—an open-air explosion is an explosion that has not got the sharpness, well defined, like an explosion from
211 a cannon or gun, where it is a very sharp report. An open-air explosion would be more of a hissing sound.

Q. And by the open-air explosion you mean an explosion where the gases were not contained within the receptacle particularly, but are open to the air?

A. It was open so that it had a chance to move out and expand without forming a practical vacuum.

Q. It didn't have to form a vacuum, the vacuum was there?

A. It didn't have to form a vacuum then, there was no vacuum then. There would not be any—there might be a partial—when the gas is closed off there may be formed a partial vacuum, but there is not such a vacuum as to form the sharp report as of a gun or confined——

Q. Which would be the case while it was confined in the receptacle?

A. Yes.

Q. Suppose it to be proven in this case, Mr. Erlendsen, and to be true, that in a sheet iron stove, in the bottom of which there was a layer of ashes and sand and perhaps gravel, not over two and a half inches in thickness, a fire from broken pieces of an egg case had been maintained for about fifteen to twenty minutes; that then the fire had been allowed to go out and no fire was started in the stove at all for from one to one and a half hours or more; that at the time of attempting to start the fire in the stove again the stove was cold, the sand and ashes in the bottom of it were cold, and some broken pieces of wood from an egg box were placed in the stove, after part of the ashes and sand had been moved to the end of the fire-
212 box, by hand, and such ashes and sand proved, upon contact with the human hand, to be cold, and then a quantity of oil was poured onto the wood in the stove, from a gallon can, and the can then shifted over into the other hand and held a foot or more from the stove, or right above it, while the party attempting to start the fire with the other hand grabbed a match, scratched it on the seat of his pants, lit it and attempted to throw it onto the wood in the stove, when there took place an immediate explosion in front of him, the flames leaping from the stove up in his face, setting fire to the oil can held in his hand, or rather, to its contents, and exploding in the oil can, setting fire to his clothing and scorching the cabin, the force throwing him backward across the cabin, burning the hair of a person standing from four to six feet from the stove in the cabin, and

hurling him up through the hatchway; taking all those facts to be true, what in your opinion was the contents of the oil can that was used on this occasion, gasoline or kerosene?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial, not a proper hypothetical question, the facts stated not being all of the facts or all of the facts necessary to enable an expert to determine or form an opinion as to the nature of the oil in the can.

The Court: I think it is for the witness to say whether he can form an opinion from that statement, or not.

(Mr. Arctander:)

Q. Can you or can you not from that statement of fact form an opinion as to whether or not the contents of that oil can were
213 gasoline or kerosene? Just answer that "Yes" or "No"—can you form an opinion from this statement?

Mr. McCord: Same objection that I just made to the other question.

The Court: Objection overruled.

(Mr. Arctander:)

Q. What is your answer?

A. I can.

Q. You can. You state you can?

A. Yes.

Q. Now, will you state, taking those facts which I have just read to you to be true, whether or not the contents of that oil can used at that occasion was gasoline or kerosene?

A. Gasoline.

Mr. McCord: I object to the question for the same reason, your Honor.

The Court: Objection overruled.

Mr. McCord: I move to strike the answer out.

The Court: Motion denied.

Mr. McCord: Exception.

(Mr. Arctander:)

Q. Under the circumstances here detailed in the hypothetical question just put to you, could the contents of that can possibly have been kerosene?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial. That is the question for the jury to pass upon. He has already stated what his opinion was, and now he is asking if it is possible.

The Court: I think it is only another way of bringing out his opinion.

214 Mr. Arctander: That is all.

Mr. McCord: I object as leading.
The Court: Objection overruled.

(Mr. Aretander:)

Q. Might it possibly be kerosene?
A. No.
Q. If there had been kerosene in the can and had a kerosene explosion, tell the jury what would have happened, what would be the necessary concomitance of that, if it was kerosene?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

A. If it had been kerosene in that can, provided the can—now, you must state whether the can was full, half full, or the approximate quantity of oil in that can—I want to have that.
Q. Well, I don't know, it don't say. The can was brought in there that morning and we have got——
A. Is it supposed to be full?
Q. I don't know. You may put it both ways, whether it is supposed to be full or it was not supposed to be full.

Mr. McCord: I object to that. He can't testify unless it is in evidence as to what he is testifying to.
The Court: Objection sustained.

(Mr. Aretander:)

Q. Can you state certain things that would necessarily have happened, whether the can had been full or half full, or without regard to how much it was filled up or how little it was filled up, in case there had been a kerosene explosion?

Mr. McCord: I object.

215 Q. Anything, without regard to how it was.
Mr. McCord: Objected to as incompetent, irrelevant and immaterial and not based upon any of the evidence, and not a proper hypothetical question.
The Court: Objection overruled.

(Mr. Aretander:)

Q. Tell the jury if there was anything necessarily that would have happened if it had been kerosene, without regard to whether it was full or half full?
A. If it was kerosene and was sufficient quantity, it would not be gasified.

(Mr. McCord:)

Q. How is that?
A. If it was sufficient quantity of kerosene in that can, it would not

on that little explosion have gasified; it would ignite and run down on the floor and throughout the whole boat, that is, the oil would be burning, it would not be gasified and form an explosive mixture, with kerosene, because of the high temperature or quantity of heat required to gasify it.

Q. In other words, the can would not have exploded then?

A. It would—even if it is possible—the oil would have run down on the floor and formed a burning fluid in the whole boat, running out; as it was an open boat, or practically an open boat, the fluid would have run all over the boat. The gallon of oil would have covered probably the interior of that boat, burning, out in the fish room and all over it, instead of being confined into the cabin.

Gasoline, on the contrary, would have formed a vapor and
216 would have burned as a vapor, without probably not hardly any fluid touching the walls or the bottom, that is, it would have generated the heat and it would not have formed a running fluid, would not have run around.

Kerosene, on the other hand, would have been running all over the floor. The heat was not enough to gasify all that kerosene, on account of the amount of heat—the latent heat required to gasify it.

Cross-examination.

(Mr. McCord:)

Q. In making that last statement, did you take into consideration the temperature of that room?

A. I certainly did.

Q. Well, now, what was the temperature, what temperature did you assume there was, what temperature did you assume was in that room at the time of this explosion?

A. I assumed it to be about 55 to 60 degrees.

Q. Why did you assume that?

A. Because it is in a northern climate and it is on the 7th day of March, on a cold—I was born close to the Arctic Circle myself, so I know just about how the climatic conditions are on the waterfront, as I am born on the waterfront myself.

Q. Did you take into consideration the fact that there was a gasoline engine running in the same room, and had been running all day?

A. I sure did.

Q. Wouldn't it be over 50 or 60 in the room where this explosion took place, with a gasoline engine running, in an en-
217 closed space, no opening in the cabin except at the place where you go up?

A. If it was absolutely closed, without any chance for the air to move out and in, it probably would be higher. You know that in a gasoline engine, or distillate, whatever you use, you are using cooling water around the head of the cylinder, holding it down. The cylinder probably would keep at a temperature not to exceed 110 or 115 degrees. The cool air on the outside having a free chance to circulate through the hatchway on top, which has left off part of

the roof and part of the wall, would hold it down and the air on the outside, if it was in the—air outside would naturally bring it down to about sixty.

Q. So you have assumed that the temperature was 60?

A. Around 60, yes.

Q. And in order to determine that you had to draw your own conclusions from your knowledge outside of any evidence here?

A. Well, the evidence has been brought forward that it was at a certain day in March.

Q. Yes, a certain date in March, and that the hatchway was open, I mean the entrance where you come up?

A. It was stated here, to the best of my knowledge.

Q. There has been no evidence as to the temperature of the cabin at the time of this explosion, has there? You have been here all day?

A. No——

Q. You have just assumed that, then?

A. I assumed it.

218 Q. And you have based your answer to the hypothetical question upon that assumption?

A. Partially, yes.

Q. So you did not base your answer upon the hypothetical question as propounded to you by counsel but you based it upon what he told you were the facts and upon what you guessed were the facts; that is right, isn't it?

A. No, I——

Q. Without your assumption that the temperature was about 55 or 60 in this cabin, your answer would not have been the same, would it?

A. It was stated that the stove was cold.

Q. You answer the question now. I say you could not form any opinion as to what that explosion was caused by if you had not assumed that the temperature was about 55 or 60 in the cabin?

A. There was nothing stated otherwise, there was nothing stated otherwise.

Q. I understand that, but I say, you could not form any opinion without assuming, in addition to what counsel stated to you, the further fact that the temperature was about 55 or 60, could you?

A. I had no——

Q. Answer the question.

A. I had no reason to assume anything.

Q. Well, I say you did assume, in framing your answer to that question, that the temperature was 55 or 60 in the cabin, didn't you?

A. Didn't the counsel for the plaintiff state it?

The Court: Answer "Yes" or "No."

219 (Mr. McCord:)

Q. You answer my question. Don't get into any argument with me; you will get along faster and get along better if you

don't. So you tell me now that you can answer that question without assuming that the temperature was 55 or 60 in the cabin?

A. I didn't assume anything.

Q. You did assume is was 55 or 60.

A. No.

Q. You didn't?

A. At the time the answer was made I didn't have to.

Q. You didn't have to. This temperature cuts no figure, does it?

A. It does cut a figure, but he didn't—he stated the stove was cold.

Q. Never mind about that. Counsel asked you if the stove was cold, nothing was said to you about the temperature of the room or of the cabin. Now then I ask you if your answer would have been the same, regardless of the temperature of the room. Answer that "Yes" or "No".

A. That is—it would have been the same.

Q. It would have been the same. So it makes no difference whether the temperature was 200 in there, or whether it was 50 or 60; is that what you want to say?

A. Not have no difference except to the stove—he had reference to the stove being cold.

Q. Yes.

A. And the oil was poured into the stove?

Q. Yes.

A. Consequently if it was a situation that would cause evaporation—no heat in that stove——

220 Q. And you based it upon that?

A. On that stove.

Q. Regardless of the temperature of the room?

A. The room——

Q. Answer the question. You based your statement upon the temperature of the stove?

A. Of the stove.

Q. On the fact of the stove, regardless of the temperature of the room?

A. Yes.

Q. Then the temperature of the room has nothing to do with it?

A. Not in answering that question.

Q. It makes no difference whether it was 110 in there, or whether it was 30 in there?

A. It don't make any difference as far as that question that I answered, and my answer.

Q. So far as that question and your answer was concerned?

A. Yes.

Q. Now then, if the stove had been hot and there had been hot embers in there, the fire had been in the stove for some time before, a half an hour before, and the burning coal were covered over with ashes, and if there were hot gravel and hot sand in there, and then you would put the wood in and pour the oil on it, then

there would generate a vapor from that condition, wouldn't there?
A. If the stove was hot?
Q. Yes.
A. If the gravel was hot, the stove would not cut much figure.
Q. I understand.
221 A. With the gravel——
Q. But I say, assuming it was hot?
A. Yes.
Q. Assuming that the gravel was hot, and assuming that the ashes were hot as the result of the fire that had been in there a short time before, then assuming that the wood was put in there and coal oil or kerosene poured on it, then it would generate a vapor, wouldn't it, begin to smoke?
A. Assuming it was hot, it would.
Q. And then won't it burn?
A. No, it would heat it up.
Q. Yes; if it began to smoke and got hot and then you dropped a match in there, you would have an explosion wouldn't you?
A. If you get air enough into it.
Q. What?
A. If there was air enough mixed into it.
Q. I say if the stove was open, the top of the stove was open, and you had the coal oil poured in——
A. Sure.
Q. —on hot embers or hot gravel, and then dropped a match in on top of it, you would have an explosion, wouldn't you?
A. Provided there was air enough thrown into it. The kerosene does not explode in itself without being mixed with the oxygen.
Q. We understand that. The two lids were off of the top of this stove and the front of it was open and you drop your match in there, you would have an explosion, if those ashes were hot,
222 or the gravel was hot, wouldn't you?
A. Provided the air was in.
Q. Provided the air was in there. Well, assuming that the air was in, then you would have an explosion, wouldn't you?
A. Yes.
Q. And you would have the same results exactly as if it was a gasoline explosion, wouldn't you, because when the vapor comes off of the kerosene it has the same properties as the gasoline vapor, doesn't it, so far as explosiveness is concerned?
A. Yes, if there is air enough.
Q. Yes. Then you would have the same explosion in one case as in the other, but it all depends on the temperature of the gravel and sand in that stove at the time of the ignition, doesn't it?
A. It would depend on that, yes.
Q. And if you had a stove two feet long or three feet long and about 12 or 14 inches wide, if there was a layer of gravel four inches thick, and that the gravel was hot, you could get the same results from an explosion under those conditions as you would if it had been in fact gasoline, wouldn't you?
A. If I do answer——

Q. And if you have oxygen in there, if you have air in there?

A. Before I answer that question, I will inform you that I will have to qualify my answer whether I answer "Yes" or "No," either my answer——

223 Q. Give it either way you want it.

A. I say yes.

Mr. Arctander: Then qualify it, if you want to.

A. I said yes.

(Mr. McCord:)

Q. And then qualify it, if you want to.

A. Because a molecule of kerosene contains a great deal more carbon than a molecule of gasoline, that is, the gasoline molecule contains far less of carbon and hydrogen than kerosene molecules, or the molecules of the hydro-carbons which go to form kerosene, therefore it is very much more difficult to obtain a proper explosive mixture with the mixing of air into the kerosene vapor than into the gasoline vapor.

Q. Yes. Now then you don't mean to say that it would take coal oil or kerosene seven or eight minutes to generate enough vapor to explode, by dropping in a match on it, if the air was in there, it would not take seven or eight minutes for it to explode, would it?

A. If there is heat enough.

Q. I say, if there is heat enough——

A. Yes.

Q. —it would not take it, would it?

A. No.

Q. It would be instantaneous, if the heat was sufficient, wouldn't it?

A. Well, no.

Q. Don't you know——

A. No, I say no.

Q. Don't you know, from your experience, and doesn't everybody know, that when you pour coal oil in upon hot embers and

224 then drop a match on it, the explosion is instantaneous and there is not any seven or eight minutes or anything else?

A. The explosion I was talking about—it will take time from the time that the coal oil will strike either hot embers or ground or whatever you are referring to, to get hot and come up, on account of its heavy specific gravity, and then if it is very hot, excessively hot, it will not throw out enough—hasn't time enough to diffuse the air in it to make it an explosive mixture, it will be explosive on the outer edges, that is, very inflammable on the outer edges, whereas the core of that steam jet will not be inflammatory, that is, there is nothing mixed into it to form the combustion.

Q. Why is it, then, that people are constantly—not constantly, but very frequently being burned by explosions of kerosene in starting fires, because they pour oil on hot coals and then drop a match in there? That is the case. You know that they do occur, don't you?

A. Sure, I know that is the case.

Q. It don't take any seven or eight minutes to do it; you know that, don't you?

A. I don't know about the time limit. That is not brought forward to me.

Q. I am asking as to your common experience and the common experience of everybody. Don't you know that if you pour coal oil in a stove, in starting a fire, on wood that is placed in a stove where there is fire, that you are going to get an explosion, instantaneously, if you drop your match in, and don't you always do it?

225 A. No.

Q. How?

A. No, not unless——

Q. Doesn't it come instantly, depending upon the extent of the heat and also the quantity of air that is circulated, if you have those——

A. If the conditions are right.

Q. If it is hot and you have circulation of air and you drop your match on it, the explosion comes instantly, and people are burned every day or two by that somewhere, aren't they?

A. The explosion is instantaneous.

Q. Yes.

A. That is what is an explosion, it is instantaneous, but the time in which it takes to mix those gases in the natural condition——

Q. You can mix those gases sufficient to cause them to explode when you take your coal oil can and put it over the stove—by the time you get enough oil on it and then take your hand away and strike a match and put it in, that is time enough to make it explode, you have seen it do that before, yourself, haven't you, right away?

A. If it is hot enough.

Q. If you have air enough and if it is hot enough, then the explosion takes place instantly, doesn't it?

A. If it is hot enough.

Q. So it all depends on the question of the quantity of heat, doesn't it?

A. Heat and time too.

Q. Heat and air. Time——

226 A. The time——

Q. Does not your statement of seven or eight minutes as to time contradict the experience of mankind in handling coal oil?

A. It does not. I was referring to a temperature about 200 degrees.

Q. 200 degrees?

A. Yes.

Q. Now, then, when you have fire in the stove, burning embers, the temperature of the stove about the fire may be 200 degrees Fahrenheit, may be less or may be more, but where the coals are and where the coals are burning, the live—what is the temperature of a live coal in a fire?

A. Well, a red hot heat is about 800 degrees Fahrenheit, between seven and eight hundred degrees Fahrenheit.

Q. So that you might have a red hot coal in a stove, of 800 degrees Fahrenheit, and three inches away from that red hot coal you might be able to hold your hand, and you would not have over 130 or 200 Fahrenheit, and be perfectly safe?

A. You might have—you can have a candle flame right in here inside of this little hole——

Q. And the point where you determine the heat necessary to bring about the evaporation of those vapors is dependent upon the temperature of the coal and not upon the temperature of the air surrounding the coal, isn't it?

A. It is dependent on the quantity of heat.

Q. I understand that.

A. On the quantity of heat and on the——

227 Q. We will take a bed of red hot coals the size of that paper. Now then I say that the temperature of that coal is 800, we will say, this is red hot coals; three inches above it or four inches above it it might not be over 200 Fahrenheit, couldn't it, in the same stove—if they were just dead coals, not blazing, but dead red hot coals, you would have a temperature of 800, and may have 200 six inches away from it, in that same stove, wouldn't you, or what would be the difference?

A. No sir.

Q. Haven't you seen a bed of red hot coals in a stove and weren't you able to put your hand within six inches of it without burning it, isn't that the experience of everybody?

A. I would ask the learned counsel if he——

Q. Answer my question.

A. Yes. Shall I answer? I said no.

Q. It is not?

A. No. But to qualify that I will ask you if your experience has not been able to—if it had been up—I put my hand on because there is evaporation takes place from the human body and the skin will hold the heat off and I retain it for a second or two.

Q. What would be the difference in the temperature, take the stove here, two feet and a half long, or whatever the size of it was—you heard—and say the bed of coals covered one-half of that space, and that those coals were red hot, with a little bunch of ashes over it, they were not burning coals, not blazing, but they had begun——

228 A. I understand.

Q. —embers, I mean——

A. Yes, I understand.

Q. —that were read——

A. Yes.

Q. —and we will say there was a slight covering of ashes a quarter of an inch thick on top of them, what would be the difference between the temperature of the burning coal and the temperature of the stove above the ashes?

A. You mean the body of the stove?

Q. Yes.

A. The air in the stove?

Q. The inside of the stove, not the stove itself, but I mean the temperature inside, what would it be? I am asking you now for your expert opinion on that question?

A. A layer of ashes on top?

Q. Yes, say a half an inch thick, or quarter of an inch thick.

A. Oh, the difference in temperature might run as high as three or four hundred degrees.

(The court here took a recess until 1.30 o'clock this afternoon.)

Afternoon's Proceedings, September 9, 1918.

(Witness withdrawn for the present.)

229 Dr. TORLEIF TORLAND, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. Arctander:)

Q. Dr. Torland is your name?

A. Yes sir.

Q. What is your profession?

A. Physician and surgeon.

Q. What university, if any, are you a graduate of in medicine?

A. University of Christiania, Norway.

Q. University of Norway?

A. Yes.

Q. When did you graduate in medicine there?

A. 1907.

Q. How long have you practiced your profession in this city?

A. Eight years.

Q. Since 1910?

A. Yes.

Q. Before coming here, where did you practice?

A. In Norway.

Q. And where are your offices here?

A. Cobb Building.

Q. You are duly licensed to practice in this state, of course?

A. I am.

Q. Are you acquainted with the plaintiff in this action, Mr. Ole Sandanger, who sits right behind me, doctor?

A. Yes, I am.

230 Q. What time did you first see him in a professional capacity?

A. I saw him July 26th, 1917.

(Mr. McCord:)

Q. What was the date? I didn't catch it.

A. July 26th, 1917.

(Mr. Arctander:)

Q. He came there to you for examination of the injuries that he claimed to have sustained in Alaska?

A. Yes.

Q. A couple of months——

A. Yes, March 7th he had sustained some injuries.

Q. March 7, 1917, in Alaska?

A. Yes.

Q. Did you give him a thorough examination at the time?

A. I did.

Q. Did you discover upon his body any evidences of his having been injured in any way, and, if so, in what way?

A. Yes, I discovered he had quite a good deal of scars on his body. I found, on examination, that he had kel/oid scars—kel/oid scars is a scar that is usually an aftergrowth of old scars, particularly in scars after burns—and he had these keloid scars on many places of his body. Particularly did he have scars on the tip—on both—on the tip and on both wings of the nose. They were rather small however. He had two wing-shaped keloid scars taking in about two-thirds of the ball of the lower lip? He had keloid scars on the left ear, especially along the anterior border, he had brownish pigmentic scars and very tender skin the whole dorsal surface of both hands.

Q. That means the back of the hands?

231 A. Yes, a part of both hands, dorsal surface of both hands, and partly extending down on back of fingers and he has a brownish pigmentation of the skin on the face.

(Mr. McCord:)

Q. What is that word?

A. A brownish pigmentation, a discoloration of the skin, a brownish discoloration of the skin of the face, on certain spots. When I saw him he was very nervous and had symptoms of neuralgic pains many places in his body.

(Mr. McCord:)

Q. What sort of pains?

A. Neuralgic pains in his body, twitching of muscles and weakness; particularly complained of a weakness of his hands.

Q. Were there any evidences of a nervous shock having accompanied this?

A. Yes. This is in my belief evidence of a nervous shock. He also had complained of trouble with his stomach, he was unable to eat and—once in a while he had vomiting, and he had three or four times spit blood; all things that he claims had developed after this injury.

Q. What did you diagnose—he told you his circumstances?

A. Yes.

Q. From the examination of his stomach, what did you diagnose the trouble with his stomach?

A. His stomach—on the fact of what he complained, I diagnosed that he had catarrh of the stomach and probability of an ulcer.

Q. You are not a specialist in stomach diseases?

232 A. No sir.

Q. What did you do with him?

A. I referred hinr to a specialist.

Q. Whom did you refer him to?

A. Drs. Fick and Leede.

Q. And Leede?

A. Yes.

Q. I will ask you whether you could tell, from his appearance, the appearance of his being burned—what was the extent of the burning, was it small or great?

A. Well, it was a rather great extent.

Q. A great extent?

A. I consider this man came to me principally because he wanted to know whether he could do anything with his scars or not, and I advised him not to do anything, because we see that those scars, even if they are cut out, usually turn much worse than they ever was.

Q. Those keloid scars, you may tell the jury whether or not there is any tendency in them to become gradually well, or are they worse after a while?

A. These keloid cars is considered a new growth in the old scar and they usually have a tendency to increase in size, rather than to go down.

Q. What effect could you see—from the test you made of him what effect was there from this burn, for instance, on his hand?

A. As I said in my statement here, the hands, on both backs of his—I mean the skin on both backs of his hands, and extending down on his fingers, was brownish, thin and kind of that glistening skin which we get after a burn. It will never be changed

233 in any way.

Q. What effect on the working capacity of his hands, as to giving pains and so forth, or weakening the hands——

A. Depends upon the work he is doing, of course. If he is doing heavy work, labor, and so forth, going in water, in all kinds of things, he might get a cracked skin and sores, because this skin is not as resilient and as tough as the normal skin.

Q. What I meant was more whether or not it would have an influence upon weakening the hand—the strength of the hand?

A. I could not say that. I don't think it would influence the weakening of his hands except that he might get pain in the skin and he might get sores and cracks in it.

Q. Would he have the same lifting capacity with the hand, do you think, as he had before the skin was injured?

A. Yes, I think so.

Q. You think he would?

A. I think so.

Q. Now I will ask you, doctor, whether or not this injury that you found in the stomach, from his description and from your ex-

amination, that you said you diagnosed as catarrh of the stomach and perhaps ulcer of the stomach——

A. Yes.

Q. I will ask you whether or not catarrh of the stomach is often followed by an ulcer?

A. It is. It is very often.

Q. And sometimes they are also made from primary causes?

A. Yes.

Q. I will ask you whether or not the severe exposure,
234 that is, the exposure to severe burn and consequent shock which you said you found evidence of shock——

A. Yes.

Q. —whether or not such a thing would be liable to produce the injury that you diagnosed that he had in the stomach?

Mr. McCord: I object as incompetent, irrelevant and immaterial and not within the issues in this case. It is purely in the realm of speculation.

The Court: Objection sustained to the question.

Q. Supposing this man, up to the time of receiving the injuries which we have mentioned here, being burned, had been well and had experienced these symptoms which you said you found upon your examination of him after the injury, state, if you can, to the jury, what connection there would be between the injury that you found, from those symptoms, and the catastrophe by which he was burned?

A. Well, I might believe and there is no doubt in my mind what is the reason for this here; an injury of this kind is caused absolutely by this explosion, or the inhalation of gas—of the gasoline gas.

Q. The inhalation of gasoline gas——

A. Yes.

Q. —could cause such an injury?

A. Absolutely.

Q. And also nervous shock?

A. Yes sir.

Q. Now, I will ask you, doctor, if you have examined him lately?

235 A. I examined him——

Q. At my request?

A. Three or four days ago, yes.

Q. Put him through a thorough examination then?

A. Yes sir.

Q. I will ask you to state whether or not this injury—did you find any continuous evidence or symptoms of this injury to the stomach?

A. In spite of the fact that he has been under treatment——

Mr. McCord: How is that?

A. I said, in spite of the fact that this man has been under treatment by a specialist on stomach diseases, Dr. Fick, and been in the

hospital for quite a long while, been lying on his back for quite a long while, there is, in my belief, not much change. He is still spitting up blood and he is still having pains and he is still weak and he is still nervous.

Q. What in your judgment is the liability of that continuing for some time, if not for all time, in his case?

A. Well, I think that is due—from the development of this case, it has not responded very much to treatment; I think it is liable to continue for a long while.

Q. A long while?

A. Yes.

Q. Can you state how long a while?

A. I could not say.

Q. It might be for all his life?

A. Probably.

Q. And might shorten it somewhat?

A. Yes.

236 Q. I understand you are not an eye specialist?

A. No.

Q. Didn't examine his eyes?

A. I don't know anything about eyes.

Q. Didn't examine the eyes?

A. No sir.

Cross-examination.

(Mr. McCord:)

Q. You are not an eye specialist and not a stomach specialist, as I understood you?

A. Beg your pardon?

Q. You are not a stomach specialist?

A. No sir. I am not, but I am a physician besides being a surgeon.

Q. But you do not pretend to have any peculiar knowledge as to stomach troubles?

A. No specialistic knowledge, but I am treating quite a good deal of stomachs, by the way.

Q. You said he was still spitting blood?

A. Yes.

Q. Did you see him spitting blood?

A. No sir, but I took his statement for that.

Q. So that what you have said as to the spitting of blood rests entirely upon what he told you?

A. Yes.

Q. You never saw anything yourself?

A. No, I never saw blood.

Q. And never saw anything in the way of vomiting either, did you?

237 A. No.

Q. That was all——

A. That was all his statement, of course.

Q. That was in the statement of the case as he gave it to you at the time?

A. Oh, pardon me, I believe I have seen——

Q. I am not asking you what you believe, I am asking you what you did.

A. Yes.

Q. And the statement as to his weakness and his nervousness was dependent upon what he told you also, wasn't it?

A. No, no, I saw those things. I could see him trembling, I could see him twitch.

Q. You haven't seen any trembling at your last examination—did you?

A. No, I didn't see very much, but he acted nervous.

Q. You saw no physical manifestation of nervousness at the time?

A. The patient's statement is always——

Q. I am not asking that. I am asking you if you are basing your conclusion upon his statement?

A. Corroborated by the symptoms I find when I see him.

Q. And you never saw any exhibition of nervousness by him at your last examination, did you?

A. Yes, I told you I saw he was nervous.

Q. At the last time?

A. He was nervous.

Q. The other day?

A. I said he was nervous.

Q. He said he was nervous?

238 A. Yes sir, I told you——

Mr. Arctander: "I said he was nervous."

A. I told you just now that I said he was nervous.

Q. You said he was nervous?

A. Certainly.

Q. You based your idea that he was nervous upon what he told you, didn't you?

A. Well, no, not on what he told me.

Q. What did you base it on, was it anything physical——

A. That he acted nervous.

Q. How did he act nervous?

A. He was shaking, he was trembling; that is nervousness.

Q. You were just sitting down talking to him and he happened to shake and tremble?

A. Yes, certainly.

Q. And yet he is in a great deal better physical condition, his weight is greater than when you saw him, isn't it?

A. Yes, I think it is.

Q. And you think he is very much improved, don't you?

A. He is not materially improved.

Q. I say, judging from the—what do you call it, what you saw—is that objective diagnosis?—And what he tells you—just which one is subjective?

A. My diagnosis is based partly on what he told me and partly on the specific symptoms which I saw.

Q. And what is the subjective examination?

A. Subjective examination, that is——

Q. That is what he told you, is it?

A. Yes. Also on what I see on the patient when he is sitting in front of me.

Q. You saw him trembling in the last three or four days?

A. I haven't seen him the last three or four days.

Q. When did you examine him last?

A. About four days ago.

Q. I say, do you say he was trembling?

A. Yes, he was trembling. He gave the impression on me of being nervous.

Q. But you based it largely upon what he told you, didn't you?

A. I corroborated by what I saw with my eyes.

Q. How was he trembling? What do you mean by trembling, just show the jury what you mean?

A. Trembling.

Q. Show the jury.

A. I am not exhibiting anything. I am telling you he trembled.

Q. Indicate to me what you mean by trembling, show me what you mean by it?

A. I can't see that I am obliged to show you what I mean by trembling. Any normal person knows what trembling is.

Q. I want you to indicate to me whether his symptoms were trembling or what they were?

A. I will not do so unless I am ordered by the court. I am not here to exhibit anything. I will state what I found on this man.

Mr. McCord: I think it is a proper question for the witness to indicate to what extent he was trembling, and indicate it so that the jury can see it.

The Court: I do not think the doctor is required to make a physical exposition of it.

Mr. McCord: Very well, if he doesn't want to.

(Mr. McCord:)

Q. You describe this trembling, then, put it in words, tell me in words, if you won't show me by a physical exposition.

A. I can't define that trembling. It is a twitching of his muscle or the shaking of his fingers, that is all.

Q. Shaking of his fingers?

A. Yes.

Q. Just as you shook your fingers then?

A. I didn't shake my fingers.

Q. The jury will observe whether you did or not. I saw you shake your fingers, by way of illustration. You mean to tell the jury that he is in no better condition today than he was a year ago, do you?

A. Not materially improved, no.

Q. Not materially improved?
A. No.
Q. How does his weight now compare with what it was before?
A. His weight, I didn't weigh him.
Q. Did he tell you, in your examination of him, that he had worked the better part of three months down here in the shipyards?
A. He told me he had been working, yes.
Q. Well, then his condition does not interfere with or prevent his carrying on physical labor, does it?
A. Physical labor very often improves a nervous condition.
Q. Well, I say his physical condition is not such as to prevent him from working and performing his ordinary duties as a laborer, is it?

241 A. Not for a certain time, I suppose.
Q. Well, I say for the last three months?
A. No, certainly not. He has been working, consequently his physical condition has not been in the way——
Q. At least for the last three months and at the present time he is capable of performing the ordinary and usual physical labor of a man of his class?
A. He shows so himself.
Q. And, so far as the future is concerned, you know of no reason why that condition and ability to continue to work will not prevail, do you?
A. I don't know anything about the future.
Q. You don't know anything about the future?
A. No sir.
Q. You won't say, doctor, will you, that he will not be able to continue and work right straight along in the future just as he has in the last three months?
A. I don't know that, sir.
Q. I ask you what is your opinion?
A. My opinion I told when——
Q. I am talking to you now. I am asking what your opinion is now.
A. My opinion is that he has been spitting blood. I know because he has told me——
Q. I want to ask you if there is anything in his condition that in your judgment would prevent a continuation of that work?
A. There is not now?
Q. There is not now?

242 A. No sir.
Q. So far as those scars are concerned, that are on his hands, they are—what kind, what did you call them?
A. Keloid.
Q. On the hands—keloid.
A. No, the hands are not keloid.
Q. How many different kinds of burns have you?
A. First, second and third degree.
Q. What is the third?

A. The third degree is a burn that goes clear through the skin and involving the soft tissues under it.

Q. So far as the third class is concerned, has he any of the third class burns?

A. No, sir, he has not.

Q. Now then, on the second class, has he any of the second class?

A. I think he has on his lip, yes.

Q. What is the second class?

A. That is through the skin, but not involving the soft tissues under—the soft cutaneous tissues.

Q. What is the first class?

A. The second only—or the skin, I mean, only.

Q. So far as the skin only, that is the skin, the burn on his hands—on the back of his hands is the first class, is it?

A. First class, yes.

Q. That was just an abrasion of the skin?

A. Yes.

Q. It was not burned through?

A. No, it was not burned through.

Q. The discoloration will continue for a while, will it?

243 A. I think that will continue all the time.

Q. All the time?

A. Yes, sir.

Q. Doesn't that wear off, with the passage of time?

A. My experience is that it usually does not.

Q. Does not?

A. No.

Q. That is not a condition involving pain after it is healed over, is it, doctor?

A. No.

Q. There is no pain from that, is there?

A. No, sir.

Q. And with the exception of the place on his lips, just underneath his lip, and on the tip of his nose and one place on the ear, there is no pain, is there, from the burns?

A. Not except that skin on the back of his hand. That is very liable to crack.

Q. But aside from that——

A. There is no particular pain.

Q. And so far as the burns on the lips and on the nose and ear, there is very little pain from those, isn't there?

A. Very little pain now, no.

Q. What?

A. No. No, their is no pain, practically now, I don't think.

Q. No pain now?

A. No.

Q. So far as the condition of the man's burns are concerned, so far as on his hands, on his leg and on his nose, he is entirely

244 free from pain?

A. Yes, I think so.

Q. And so far as those burns are concerned, he is practically well

of that, isn't he? I mean so far as the healing over is concerned and the pain is concerned?

A. Yes, except disfigurement, of course.

Q. I understand that—aside from the disfigurement. He will suffer no inconvenience except the disfiguration?

A. No, sir, I don't think so.

Q. Now then, so far as his physical condition is concerned, so far as his stomach is concerned, you made no examination of the stomach, did you?

A. Oh, certainly I did.

Q. What did you do?

A. I examined his stomach. I didn't make any X-ray or anything like that.

Q. Did you pump it out?

A. No, I didn't pump it out. I made a physical examination to ascertain whether there was pain or whether there was a rigidity or whether there was any soreness or anything like that.

Q. And he told you there was some soreness across his stomach, didn't he?

A. Yes.

Q. You thought there was ulceration of the stomach?

A. No, I didn't say I thought there was. I said there is a possibility there might be an ulceration.

Q. But you don't give it as your opinion that he was suffering from catarrh or from an ulceration either?

A. I gave it as my opinion that he was suffering from
245 catarrh, but I didn't say ulceration, I said possibility of ulceration.

Q. How do physicians and surgeons discover whether or not there has been an ulceration.

A. They usually have to use the X-ray and pump the stomach.

Q. You pump out the stomach?

A. I sent him to the specialist for that purpose.

Q. I say that is the system, that they pump the stomach out and analyze and diagnose the contents and determine whether there is any blood there, don't they?

A. Yes.

Q. The contents of the stomach, after it is pumped out——

A. Not the contents of the stomach showing blood. The bowels usually show the blood, if there is any ulceration.

Q. Is not the usual treatment by the specialist——

A. That is specialistic——

Q. ——to pump the stomach out, and from the contents of the stomach—upon an analysis of them they are able to tell whether there is an ulceration?

A. Not only from that.

Q. That is one of the tests?

A. The main thing is the X-ray where it is——

Q. The X-ray—they fill your stomach with bismuth, don't they?

A. Barium; they don't use bismuth any more, they use barium.

Q. They have improved since on that, have they?

A. Yes, sir.

Q. Barium, that is another metal—it is a metal, isn't it?

246 A. It is a non-toxic, but bismuth is toxic.

Q. It is metal?

A. Yes, it is a metal.

Q. When this barium goes inside of the stomach, if it is inflamed—if it is ulcerated, how will the X-ray picture exhibit that?

A. The X-ray picture will usually not exhibit anything. The diagnosis is based principally on the six-hour residue. Usually the stomach is going to be emptied in six hours. We usually cannot see that, very seldom, that is, one in a hundred cases we can see it. We base this usually on the fact that—if it is emptied in six hours, we will in most cases conclude that the stomach is all right; if it is not emptied in six hours, we know there is something wrong with the motility and that the outlet of the stomach—we know that ulcers most often come at the outlet of the stomach. We then have a pretty fair evidence that we have an ulcer, but we very seldom see the ulcer, it is difficult to see that.

Q. If the test determines that there is an ulceration in the stomach, there is only one remedy, and that is to operate, isn't it?

A. Oh, no.

Q. That is the principal remedy, isn't it?

A. The principal, yes, the surgeons will say that, but the internal medics will not say that.

Q. I ask you as a surgeon?

A. As a surgeon, I will say that if there is no active

247 bleeding—if there is active bleeding, we can't operate.

Q. You finally will operate?

A. I think I will.

Q. That is the only positive cure, isn't it?

A. I think so.

Q. And that is what the profession generally think, isn't it, in these later days?

A. The internal medical men don't say so.

Q. What do you mean by the internal medical man?

A. The stomach specialist who treats these things. They put them to bed and give them medicine, and diet, and they expect and in many cases get them well with it.

Q. Aren't you wrong about that? Is not the treatment of these internal surgeons, as you call them—isn't that along the line of not operating until they are absolutely sure ulceration is there?

A. Yes, very often it is, but they do cure some cases.

Q. And in every case, if they are careful, the first they do is to pump out the stomach and take X-rays, and then they try the dieting treatment for a while, and finally they resort to operation?

A. Operation, yes sir.

Q. Dr. Fick is—you referred him to the specialist, didn't you?

A. Yes sir.

Q. He never operated on him, did he?

A. Fick was called away. He would have turned him back to me again.

Q. He didn't turn him back to you again—you didn't
248 operate?

A. No, Fick was suddenly called away to war.

Q. He was in the hospital here a year ago, wasn't he?

A. Yes.

Q. Or nearly a year ago?

A. Yes.

Q. He has not been away a year?

A. No, he was called——

Q. He was here for six months after he left the hospital, wasn't he?

A. Yes, he was.

Q. Still there was no operation?

A. No.

Q. Now, doctor, you say with the exception of possible breaking of the skin because it is thin and delicate, that he will be able to go and in all human probability perform his ordinary duties just as well as he ever did, don't you?

A. Yes, I think so, unless there should happen anything with his stomach or anything like that.

Q. You say he inhaled, you think, from what he told you——

A. Yes.

Q. —gasoline gas?

A. Yes.

Q. Well, now, you know the circumstances under which he was burned, don't you?

A. Well, I don't really recollect them. I would have to look in my chart.

Q. There was an explosion there and he was pretty badly burned. You know about what it was. In the cabin of a small
249 vessel?

A. Yes, he was making a fire in a stove on a little boat.

Q. If the kerosene had exploded and burned him, if that had been the result of a kerosene explosion, the same inhalation would have produced the same result, wouldn't it, as you think the gasoline gas produced?

A. I think it would, although kerosene is not as volatile.

Q. I understand.

A. I don't know anything about that.

Q. You do know kerosene at a certain temperature will give off fumes?

A. Certainly.

Q. And vapors?

A. Yes.

Q. And if those vapors are ignited, it causes an explosion?

A. Yes sir.

Q. And there is a result from gas on the man who produced that?

A. Yes.

Q. And would not the inhalation of that produce, in your judgment, just the same results as the inhalation of gas following a gasoline explosion?

A. I think it would. I think so.

Q. I didn't quite understand you a moment ago as to the blood coming from the bowels, from an ulcerated stomach. You say blood will come from the bowels. I don't quite understand you.

A. If there is a great amount of blood that escapes, a great deal of bleeding in the stomach, you have a patient blood sick,
250 vomit up; and it passes through the stomach and it goes in the bowels and comes out in that way.

Q. If there is an ulcerated stomach, is it possible or is it customary and usual or possible or probable that you can spit it up?

A. Oh, certainly, certainly.

Q. It will go through the bowels and up here through the mouth?

A. It can go another way, I mean.

Q. Now then, when anyone is spitting blood, that blood the average layman doesn't know where it comes from, does he?

A. No.

Q. It may come from his teeth?

A. Yes.

Q. It may come from his throat, it may come from other places?

A. Yes sir.

Q. Outside of the stomach?

A. Certainly.

Q. And the mere fact that some one happens to spit up blood occasionally is not an indication that a man has an ulcerated stomach, is it?

A. No, not as a rule. I mean not always.

Q. Now then, if you breathe or inhale burning gas, that might cause some trouble to the throat, that would account for the blood discharges of the stomach, wouldn't it?

A. Yes.

Q. Now, another thing: What is the reason why a man
251 cannot eat meat, with stomach trouble, is there any reason why he could not eat meat and yet could eat fish and fowl and vegetables, one cause him pain and another not?

A. When we have ulceration of the stomach, the meat and certain other things, in order for it to be digested they need more hydrochloric acid than other lighter things need, consequently when we get more hydrochloric acid down there in the stomach secretion, there would be more pain and they would be usually vomited up.

Q. If they have weak stomachs, they don't usually eat meat?

A. Usually not.

Q. Sometimes beefsteak is one of the things given them, isn't it?

A. Sometimes we give them beef juice, yes.

Q. Well, the extract from meat?

A. Yes.

Q. Don't they as a rule, isn't that one of the recognized treatments for stomach trouble——

A. Yes.

Q. —to either give them the juice from the meat or grind it up fine?

A. Yes. That is called Loub's treatment.

Q. The trouble about eating meat is, then, that pain that is caused from it is due to a lack of proper mastication, isn't it—proper chewing?

A. That is pretty speculative, I could not——

Q. Don't you hear of these hospotals where they treat people for stomach troubles by the diet process—don't they give them beefsteak right along, but grind it up and have it partially or make it
252 easy to digest?

A. They do it in some places, yes.

Q. Well, you know Dr. Jones' hospital in Portland, don't you?

A. Yes.

Q. That is recognized as one of the best in this country?

A. I know his hospital very well.

Q. Isn't that his treatment?

A. That is his treatment in some cases, not in all cases. That is not his routine treatment.

Q. I did-'t hear you?

A. That is not his routine treatment.

Q. Routine treatment.

A. It is not routine treatment. He does it in a certain percentage of cases, and in a certain percentage of cases he does other things.

Q. Would not the eating of fish produce the same pain as the eating of meat?

A. No, I don't think so, not as a rule, unless the fish is very fat. In a general way—we cannot judge of cases of the same thing the same way in different persons, because one person acts quite different than other persons. I am not talking about this man, you understand.

Q. How much did this man weigh when he first came to you?

A. I have forgotten now. I don't know whether I made any note.

Q. See if you didn't take a memorandum of his weight.

A. (After examining.) No, I haven't made any memorandum of his weight. I only have said he lost eight pounds.

Q. Lost eight pounds?

253 A. That he lost eight pounds from the time I saw him or had——

Q. That is, he had lost it from what?

A. He lost it from July 26th, when I saw him first, until October 15th, when I saw him, he lost eight pounds during that time.

Q. You haven't any knowledge as to what his weight was?

A. No, I haven't.

Q. Isn't that a little unusual, doctor, not to weigh them?

A. No, I don't have the weight in my office.

Q. How do you know he lost eight pounds?

A. He told me so.

Q. He——

A. That is all.

Q. You didn't get it as the result of weighing him yourself?

A. No, I usually tell my patients to weigh themselves.

Q. How did he look at that time as compared with now, was he thinner?
A. Not materially.
Q. Just about the same?
A. Just about the same.
Q. He weighs about 180 pounds now, doesn't he; five feet seven inches tall?
A. I don't think he weighs 180 pounds.
Q. Well, about what would he weigh, just give us your judgment?
A. I should judge about 165 or 70.
Q. If he weights 175 or 180, you are not a good judge, are you?
A. No, I probably am not.

254 Redirect examination.

(Mr. Arctander:)

Q. Doctor, may I ask you one thing: Counsel asked you if he spit blood, whether that could come from anything else besides ulceration of the stomach?
A. Could come from the lung.
Q. You state it could. When you find spitting of blood, then, find the symptoms that you had in this case, would that indicate anything to you as to where that blood came from, to spit blood?

Mr. McCord: I object to that as not proper examination. It is purely speculative.
The Court: Objection overruled.

(Mr. Arctander:)

Q. Would it?
A. Of course, we never base a diagnosis of ulcer of the stomach, or any stomach trouble, alone from the fact that a patient tells me so. We always corroborate them with other symptoms, from that which we find. On this man, I found evidence which led me to think that this came from the stomach.
Q. That the blood came from the stomach?
A. Yes.
Q. There is another question I forgot to ask you: Can you tell the jury whether or not, from the burns of which you found evidence there on him—tell the jury whether or not the burning which he must have been subjected to from those—what you found evidence of——
A. Yes.
Q. —whether or not it was connected with great or excru-
255 ciating pain, or not?
A. Well, when he first got them, he must have had lots of pain; we always get lots of pain with those things.
Q. And lasting for some time?
A. Lasting for quite a long while, yes, until they all heal up.

(Witness excused.)

PETER ERLENDSEN resumed the stand.

Cross-examination (resumed).

(Mr. McCord:)

Q. You have been discussing about this stove, and you say if it is an open stove or a contracted or open space or contracted space——

A. I didn't——

Q. About the stove, what was the size of the stove that you had in mind?

A. I testified to a stove about a foot by two feet.

Q. I ask you what was the size of the stove or what your view of it was, upon which you base your testimony?

A. The stove that has been testified to here.

Q. Well, what was it?

A. It was a stove about a foot—one foot wide and two feet long and about eight inches deep, about two inches of sand in the bottom, and the firebox about six inches wide, something like that. I think that was testified to.

Q. That is upon what you based it?

256 A. Yes; two lids on top.

Q. You say you will get an explosion if you have a proper amount of heat and the proper circulation of air coming in contact with the ignition, that will produce an explosion in a closed place. What did you mean by that?

A. That is in an enclosed place in the stove.

Q. That is, you call that——

A. Take the two lids off, which has been testified to——

Q. And you don't call an enclosed——

A. I would not call that a closed——

Q. —stove, in a closed drum?

A. There is more open air, there is no confinement, there is nothing that restricts it there. It has to be the comparative size of the opening to the stove chamber and the amount of explosive is very large in these cases, and there is no barrel or anything for it to pass through, so it has no extra compression.

Q. What would be the difference between an explosion in that stove and one on the outside, on the floor, where you had it outside in the cabin?

A. Not very much, not very materially different.

Q. Not any material difference. In order to make a more violent explosion, it has to be more contracted?

A. Confined.

Q. Now, what do you mean by an explosion, something that breaks things all to pieces, sufficient to smash a coal oil can?

A. An explosion is the act of excessive quick expansion of gases.

Q. That would mash a coal oil can, would it not, that is,

257 the explosion from the gas in the stove would——

A. On the outside?

Q. Yes.

A. You mean the explosion from the outside hitting the sides of it?

Q. Yes. The dishes were thrown around there, as I understood it, and broken. Would that be sufficiently strong to break the can, or cause the smashing of the can, throwing it against the wall?

A. If thrown against the wall, that is, if the oil can was thrown against the wall, the act of hitting the solid body might crack it.

Q. Then the heat from the explosion would generate the gas and convert that coal oil or gasoline into an explosion, wouldn't it—would make it explode?

A. Gasoline would—the heat would be sufficient, if it was gasoline, to evaporate practically all of the contents of that can.

Q. If it spread out on the floor, it would evaporate at once, as I believe you said, did you not?

A. Spread on the floor or anywheres in the air, whatever was retained on the floor.

Q. What I am getting at is this: If that oil was spilled out of the can onto the floor—you said ran on—it was cold——

A. Yes.

Q. —it would not explode or flare up so quickly, that is what you said, didn't you?

A. Yes, it would not.

Q. But the heat from the explosion in the stove would be
258 sufficient to cause the vapor—with the coal oil out on the floor, to make the vapor and make it ultimately explode, wouldn't it?

A. No sir, it would burn on the floor.

Q. Burn on the floor. Burn the oil on the floor, would it?

A. On the floor. It would run——

Q. As the oil began to burn, wouldn't it finally make a flare-up?

A. No sir; it would consume it as fast as——

Q. You think it would do that, have that effect?

Mr. Arctander: That is kerosene?

A. That is kerosene, yes.

(Mr. McCord:)

Q. Now, then, so far as gasoline, you say that would flare up all at once?

A. Practically all at once.

Q. Now then, how long would it take this fire to continue—how long would this burning inside of the cabin continue; if it was gasoline? Almost instantaneously, wouldn't it?

A. No, not exactly instantaneously.

Q. What?

A. Not exactly instantaneously.

Q. As soon as it began to explode and flare up and burn, it would not take it over a few seconds to burn up, would it—gasoline?

A. The question is if there was air enough in that cabin to fulfill the function of combustion.

Q. Well, you said a part of the top of the cabin was gone, and the

stairway—I don't know what you call it—the companion-
259 way, isn't it?

A. Yes.

Q. That was all open?

A. That was open.

Q. Now, with that in view—with those conditions as they were then on the 7th of March, if that was gasoline it would have burned out very quickly, wouldn't it?

A. That as I say—quickly, yes, quickly, but there would be a time there; not instantaneously, no.

Q. Ten or fifteen seconds to do it, or could be?

A. No, not ten or fifteen seconds.

Q. Not that long?

A. Not that quick.

Q. How long?

A. It probably would take a half a minute or something like that.

Q. Possibly a half a minute?

A. Yes sir.

Q. How long would it have taken coal oil to burn out if it was scattered on the floor that way and all aflame?

A. From my personal experience with handling coal oil and burning it——

Q. I am not asking for any specific instance. I am asking your opinion as an expert, as to how long it would take?

A. From three to five minutes, at least.

Q. If it was coal oil?

A. Coal oil, yes; that is the least it would take.

Q. Now, if it was coal oil and it took from three to five minutes, wouldn't you think that if it did take five minutes to burn it
260 out, and you had to put the top on the stairway, on the cabin, and close it up and smother it out, that it must have been coal oil instead of gasoline? If, as a matter of fact, just assuming as a matter of fact that it did take about five minutes to put it out, and then you could only put it out by closing the door, putting down the hatch, shutting off the air and smothering it out, after it had burned for some little time, say three to five minutes, wouldn't you then think that that was a fair reason for assuming that it must have been kerosene and not gasoline?

A. No.

Q. Why not?

A. Because, as I say, it is a question has the gasoline got air enough in there to consume it in the first place for the combustion.

Q. You say it would take the gasoline a half a minute to burn out under those conditions. Now, then, if as a matter of fact it took five minutes for the flames to be put out, wouldn't you think that it must have been kerosene instead of gasoline?

A. If it took—extended along the length——

Q. And showing that it was necessary to close down the hatches to smother it out, wouldn't you think it was probable the long combustion was due to its being kerosene rather than gasoline?

A. The longer the combustion would indicate kerosene, the longer the combustion——

Q. That is exactly the question.

A. But——

261 Q. You put it just right. The longer the combustion. The combustion would be longer on kerosene than it would with gasoline?

A. Yes.

Q. And if it did take longer to burn out—if the combustion was greater and was longer, and you had to close the hatches down to put it out, then there would be some reason for assuming that it was kerosene rather than gasoline, wouldn't there, if, as a matter of fact, it did burn longer and did take longer to burn it up?

A. The kerosene would burn down on the floor——

Q. What?

A. It will be burning down on the floor, not up on the walls.

Q. But it would be flaming up, wouldn't it?

A. Flaming—I should be——

Q. It would be as high as your waist, or something of that sort; kerosene gets afire and when it is hot enough it will burn, won't it?

A. If it gets hot enough.

Q. Yes.

A. If it gets hot enough.

Q. And if you have heat in there sufficient to burn a man, and the whole thing in flames, or an explosion, the kerosene or anything else on the stove would burn, would it, be heat enough to burn it?

A. If you have heat enough, if you apply a sufficient amount of heat.

Q. In this little thing 10 by 6, 6 feet wide, four or five
262 feet wide and eight or ten feet long, that is a small place, isn't it?

A. Yes, it is not a large place.

Q. And if you had an explosion from the stove, a flare-up, sufficient to burn a man standing up, causing the explosion, just as the witnesses said, you would have the whole inside of it aflame, wouldn't you, and that would set fire to any kerosene that was on the floor, wouldn't it?

A. Most likely it would.

Q. Sure, wouldn't it? How long have you been where you say you live?

A. I live over at Fletcher Bay, Kitsap County.

Q. How long have you lived there?

A. Oh, I have lived there twenty years.

Q. You are a farmer, are you?

A. Well, I don't do much farming.

Q. What do you do?

A. Oh, I am living there, making my home and doing whatever I like.

Q. How do you make a living? I don't mean to be personal about it, but what occupation are you engaged in?

A. Well, now, it is mighty hard to repeat to you whatever I have done in twenty years.

Q. I mean what are you doing now for a living?

A. Well, I am in here right now.

Q. Yes, testifying as a witness, as an expert.

A. At this time I am, yes. Otherwise I——

Q. You are making some money as an expert witness here, making a living, are you?

263 A. This is the first time I have been called on that line.

Q. Have you had any experience in twenty years in the handling of gasoline and kerosene?

A. I have.

Q. I mean in a business way?

A. I haven't been employed by anybody else, but I have done it because I was working on a metallurgical question in 1909 and I made a discovery which I am not going to tell you which it was even.

Q. I won't ask you that——

A. And I happened to see in the papers a notice, from some parties at the University of California, something nearly similar to mine, but not exactly the same, and it involved the use of oils.

Q. Well, you would properly be called an inventor, then, would you?

A. Well, I might in certain lines.

Q. You are getting a patent, are you?

A. No, I didn't.

Q. In other words, your experience in the handling of gasoline, in a commercial way at least, or in a business way, terminated in 1898, at Minneapolis?

A. Sure it did.

Q. And you have had no other practical or business commercial experience in the handling of either gasoline or kerosene since that time?

A. For somebody else, no.

Q. The only way that you have used it is in connection with your invention that you are now perfecting?

(No response.)

264 Q. Well, I don't want to know what it is, because it might rob you and would not benefit me.

A. But gasoline and kerosene never changes their properties, they are chemical properties that don't change. Their properties will extend forever.

Q. I don't understand what you mean by saying it would take seven to eight minutes for kerosene to throw off vapor sufficient to cause an explosion when it would come in contact with a match-lighted match. I don't know that I quite understand you. Will you tell me what you mean by saying it would take eight minutes.

A. Did you listen to the question?

Q. Well, I may be duller than you, but I would like for you to tell me, again, if you said it. I said I didn't understand it, and I will be obliged to you if you will give it to me.

A. When I had told you——
Q. All right.
A. It is in answer to showing that I answered a certain question.
Q. I am asking about a certain statement. I am asking you to state what was meant by that seven or eight minutes. Go ahead and do it.
A. It was meant that under the condition that was propounded by the question that was plain, it would take about that time before it had ability to accumulate enough and diffuse with the air enough to make an explosive mixture.
Q. What you meant was that it would take seven or eight minutes to generate it in a cold stove?
265 A. In a cold stove or a stove up to 150 or 200 degrees Fahrenheit.
Q. And that assumed that there was no hot gravel or anything else in there?
A. Below that temperature.

(Witness excused.)

Mr. Arctander: We rest, Your Honor.
Mr. McCord: I would like to ask Mr. Sandanger a question before you rest.

OLE SANDANGER, the plaintiff, being recalled for further cross-examination, testified as follows:

(Mr. McCord:)

Q. Mr. Sandanger, how long did you say you had worked on this particular boat?
A. Two days.
Q. Two days. That was the third day before the accident, was it, or the fourth day?
A. Oh, I thought you meant down here on the Sound when I came down.
Q. No, up in Alaska, on the boat on which you were hurt?
A. A little over two weeks, between two and three weeks.
Q. What were you doing on the boat?
A. I was towing piling part for the construction.
Q. You ran the boat part of the time, did you? I mean you steered it? You knew how to do it, did you?
A. Well, I was running the engine that time.
Q. Running the engine?
266 A. Yes.
Q. During practically all of the two weeks?
A. Yes.
Q. Did you have to take your orders from Mr. Stensland, the master of the vessel?
A. Not then.
Q. Who did you take your orders from?
A. Of course, John Jorgenson was captain.

Q. You took them from John Jorgenson?
A. Yes.
Q. And it was on this same boat?
A. It was on the same boat.
Q. And you had been working there about two weeks?
A. Well, between two and three weeks, I don't know exactly, on that date.
Q. And those services came within your general employment, did they?
A. Yes it was company employment.
Q. This boat was owned by the Carlisle Packing Company, was it?
A. Yes sir.
Q. And it was within the line of your employment that you did this engine work on the boat—what were you doing on the day that you were hurt?
A. The day I was hurt?
Q. Yes.
A. We was out on the bay, Buswell Bay, after some sand for the company.
Q. But you had to take your orders that day from Stensland, did you?
267 A. Yes, he was the boss that day.
Q. And you did whatever he told you, you did whatever Stensland told you?
A. Sure I did.
Q. And when he told you to go down and wash the dishes and clean up the vessel, you went, did you?
A. Yes, I went when he told me.
Q. That was a part of the duties, was it?
A. Sure.
Q. Running the engine was a part of your duties, if the captain had told you to do it?
A. What did you say?
Q. If the captain had told you, you would have done it?
A. Yes, sure, I would have done what he said.

(Witness excused.)

Mr. Aretander: We rest.
Mr. McCord: Your Honor would excuse the jury for a while?
The Court: The jury may retire to the jury room.

(The jury was later excused until half past nine o'clock tomorrow morning. Whereupon the following proceedings were had in the absence of the jury:)

268 Mr. McCord: If the court please, I now move the court, first, for a nonsuit and dismissal of this action, upon the grounds and for the reasons that the proofs fail to show any ground of negligence upon the defendant that would justify the verdict of the jury for any sum whatever, and upon the further ground that

the allegations of the complaint are in no manner sustained by the proofs.

Second. If the motion for nonsuit be not granted, in the alternative I move the court for an order taking this case from the jury and directing a verdict in favor of the plaintiff and against the defendant for the sum of $175, and no more; the evidence now before the court showing that the plaintiff, if entitled to recover anything, must, under the law, be limited to the recovery of $175, the amount of his doctor bills and hospital bills sued for in the complaint, the wages of the plaintiff having been paid, according to the testimony, up to the end of the year, while there is no evidence to show what those wages were for the life of the contract, and the doctor bills and hospital charges in Cordova, at the place where the accident occurred, having been paid and shown affirmatively to have been paid by the defendant.

(Argument.)

(Court adjourned until 9:30 o'clock tomorrow morning.)

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(Further argument.)

The Court: There is some question in my mind as to whether this man is a seaman or not. I think, as long as we have proceeded so far with the trial as we have, we will go ahead with it.

Mr. McCord: What is that?

The Court: I say, we have taken so much time in putting the evidence in in this case, I think we had better let the evidence go to the jury in order that we may have a final determination of it. If a verdict is rendered, the question can be raised just as well as it can at the present time. So I will deny the motion.

Mr. McCord: Note an exception.

The Court: It seems to me the question is whether this man is a seaman, or not, and, if he is, under that late decision of the Supreme Court of the United States——

Mr. McCord: Your Honor——

The Court: I will hear the argument on the other side. I will overrule the motion.

Mr. Arctander: I think I can convince Your Honor, under that contract, that that is not a maritime contract, when the time comes.

Mr. McCord: Your Honor will not deprive us from raising the question at the conclusion of the case, at the conclusion of the evidence?

The Court: No. It goes to the right of recovery. You may make it as a motion notwithstanding the verdict.

Mr. McCord: After we finish our case, I do not want to be
270 precluded from making the same motion again.

The Court: No, you can make the same motion at that time.

Mr. McCord: Exception.

The Court: Bring in the jury.

270½ THE DEFENSE.

271 The jury having returned into the court room, and counsel for defendant having made an opening statement to the jury, the following proceedings were had:

Mr. Hadley: We offer in evidence the depositions, first of John Peterson and Iver Stensland. They were taken under stipulation of counsel.

Mr. Hadley here read from the deposition of John Peterson down to and including line 19 on page 9 thereof, whereupon:

Mr. Aretander: I object to that as incompetent, irrelevant and immaterial, and not for the witness to say what anyone could do.
Mr. Hadley: It is a matter of common knowledge.
The Court: Overrule the objection.

Mr. Hadley continued the reading of said deposition down to and including the following question beginning on line 2, page 10: "Did you ever see him taking the tops off, to determine whether there was gasoline or kerosene in it?" Whereupon:

Mr. Aretander: That is objected to, because there is no testimony of the kind, that he took the tops off.
The Court: I did not hear the question.

(Mr. Hadley again read the question, whereupon:)

Mr. Aretander: There is no testimony of Mr. Jorgenson that he did do anything of that kind. That is my objection.
Mr. Hadley: So far as that is concerned, it is orginal testimony.
The Court: Objection overruled.

The reading of said deposition was continued down to and including line 18 on page 11, the discussion between counsel
272 shown in the deposition beginning with line 19 on page 11 and ending with line 8 on page 13, not being read to the jury. Whereupon the reading of the deposition was continued and concluded, the discussion between counsel, appearing on pages 16 and 17, not being read to the jury; the cross examination being read by Mr. Aretander.

The deposition of Ivar N. Stensland was offered in evidence by counsel for defendant and read down to and including line 25 on page 55 thereof, when Mr. Hadley introduced in evidence the chart offered in connection with the deposition, same being received in evidence without objection and marked "Defendant's Exhibit 1."

Thereupon Mr. Hadley offered in evidence the tide tables offered in connection with said deposition, which were also received in evidence, without objection, and marked "Defendant's Exhibit 2."

The reading of said deposition was continued and concluded.

Mr. Hadley: We offer in evidence the deposition of Nels Hawkinson.

The deposition of Nels Hawkinson was here read in evidence.

Mr. Hadley offered and read in evidence the deposition of Hans D. Sorvick, down to and including the answer to Interrogatory 6, whereupon:

Mr. Aretander: Now, I object to "State whether or not you are familiar with the coal oil drums used at the cannery of the Carlisle Packing Company in Cordova, Alaska. He says that he has worked for them eight months for three seasons, and I enter an objection to that as incompetent, immaterial and irrelevant, not limited in time, not even confined to 1917.

The Court: I will overrule the objection.

Mr. Aretander: Exception.

Mr. Hadley continued the reading of said deposition down to and including Interrogatory 8, whereupon:

Mr. Aretander: Same objection, as to time, to question 8, and also to 9 and 10, so I do not need to take up the time.

273 The Court: All right.

Mr. Aretander: Exception.

Mr. Hadley continued the reading of the deposition down to and including the answer to direct interrogatory seventeen, whereupon:

Mr. Aretander: I would have to object to questions eighteen and nine*t*ween—"State whether or not you are familiar with the methods used for storing oils and gasoline in the Carlisle Canning Company during the year 1917." Not limited in time, *or at* before the accident. And the next question: "Give your opinion of that method"—well, I will come to that afterwards. I have objections to that.

The Court: Objection overruled.

Mr. Hadley here read direct interrogatory eighteen and the answer thereto, and direct interrogatory nineteen, as follows: "Give your opinion of that method with regard to the prudence and carelessness thereof?" Whereupon:

Mr. Aretander: We object to that, first, for the reason we objected to the former one, that it is not limited——

The Court: I sustain the objection.

The Court: We make an offer to show by this witness the statement contained in his answer to question nineteen.

The Court: That is the question I sustained the objection to.

Mr. McCord: Yes, in the deposition of Hans D. Sorvick we make, as our offer, the statement contained in the answer to interrogatory number nine*t*ween.

Mr. Aretander: I want the further objection to go into it, that the answer shows comparisons, and it is not proper, with other canneries. So that the objection will be full.

274 Mr. Hadley: That takes twenty along with it, doesn't it?

Mr. Aretander: Yes.

Mr. McCord: Read the questions and let him object. Read question twenty.

Mr. Hadley (reading): "What time?"
Mr. Aretander: I don't care about it.

Mr. Hadley continued the reading of said deposition down to and including Interrogatory 21, whereupon:

Mr. Aretander: The same object- as to the other, as to time.
The Court: Objection overruled.
Mr. Aretander: And incompetent, irrelevant and immaterial.

Mr. Hadley concluded the reading of said deposition.

Mr. Hadley offered in evidence the deposition of Charles Foyston, and read from same down to and including interrogatory 14, whereupon:

Mr. Aretander: Objected to as immaterial and irrelevant whether anybody else went any oftener to the oil house than he.
The Court: I do not know, myself, how it would be material. I do not know whether what follows will make it material. Overrule the objection.

Mr. Hadley continued the reading of said deposition down to and including Interrogatory 15, whereupon:

Mr. Aretander: Objected to as before, because it is not limited as to time.
The Court: Objection overruled.

Mr. Hadley continued the reading of said deposition down to and including the words "four inches" in the answer to Interrogatory 19, whereupon:

275 Mr. Aretander: I would like to make the same objection as to time, no time being shown, and I want to call your attention—I think it is proper that you should know it—that not only have our witnesses whose depositions have been taken shown that there was a change after this accident happened to Mr. Sandanger, in regard to the oil house and what there was in it, but the witnesses that he has brought forth here have testified also to a change. In John Peterson's testimony, on pages 3 and 4, he was asked, "Was there any gasoline in this oil room, in drums?" Answer "No, not at the time." And then the next question, "Did you have any gasoline or did the company have any gasoline stored in drums in this building?" "A. No, not at the time." And in Mr. Hawkinson's testimony—they all agree upon it—line 20 on page 3 of his testimony, "Were there any other drums in the oil house at that time?" "No, not at that time." On page 4, line 3, "Was there any other gasoline or distillate in the oil house?" "Not at that time." Showing that all the testimony agrees upon it that there was a change in the conditions up there, and under those circumstances it seems to me to simply ask them whether or not there was any mark on these drums in the oil house, without pinning them down to the time, on or about the time of this accident, either shortly before or shortly afterwards

or at the time of the accident, is not proper. I wanted to make myself clear and except to the ruling of the court.

Mr. McCord: It goes to the weight of the testimony.

The Court: I will overrule the objection.

276 Mr. Aretander: Can it be considered by another——

The Court: It is a matter you can call the jury's attention to.

Mr. Aretander: Yes, I know that, but I thought I ought to probably save the point here. May I enter the same objection to questions 20, 21, 22, 23, 24, 25, 26, 27, and each of them?

The Court: That is the ones he is offering now?

Mr. Aretander: Yes, the ones he is reading now. I don't want to object all the time.

The Court: All on the same ground?

Mr. Aretander: All on the same ground, that they are not limited as to time, it appearing in the evidence that a change had taken place.

Mr. Hadley continued the reading of said deposition down to and including the answer to Interrogatory 32, whereupon:

Mr. Aretander: I desire to interpose an objection to question 33: "State whether or not in your opinion the oil and the gasoline of the Carlisle Packing Company were carefully stored?" I want to object to that as incompetent, irrelevant, immaterial, and being a conclusion for the jury.

The Court: Objection sustained.

Mr. McCord: He has not read the question yet.

Mr. Aretander: Yes, that is what I read to the court—was the question, and I also want to object to the next question "State whether or not kerosene or coal oil poured into a stove with hot coals or embers would explode?" For the reason that it is incompetent, irrelevant and immaterial, that this witness has not been shown to

277 be competent to give any testimony as an expert.

The Court: He has not shown any experience.

Mr. Aretander: No experience at all, sir.

Mr. Hadley: Question 30: "State whether or not you are familiar with both gasoline and coal oil, or kerosene so called?" Answer, "Quite familiar." Would that qualify him?

Mr. Aretander: Do you think it would?

The Court: Oh, I will sustain the objection.

Mr. Hadley: I offer this in evidence, I offer that deposition in evidence.

Mr. McCord: We offer in evidence, Your Honor, as a part of the evidence of this witness, the answers to the interrogatories 33 and 34, contained in the deposition of Charles Foyston. We offer to prove by this witness the matters and things stated by him in the answers to the questions.

Mr. Aretander: You offer to prove it by the deposition, I suppose.

The Court: Objection sustained.

Mr. Hadley here offered in evidence the deposition of Nick Lorenson, which he read down to and including the answer to Interrogatory 8, whereupon:

Mr. Arctander: I object to question number nine.

The Court: Read the question.

Mr. Arctander (reading): "As an experienced fisherman, state whether or not you used coal oil to start fires in the stoves" as incompetent, immaterial and irrelevant, the question not being what is the the customary charge, but what he used to do, which would be, of course, not proper evidence.

278 The Court: Objection sustained.

Mr. McCord: We offer to prove by this witness the matters and things stated in the answer to Interrogatory number 9 in the deposition of Mr. Lorenson.

Mr. Arctander: Objected to as immaterial, irrelevant and incompetent.

The Court: Objection sustained.

Mr. Arctander: Now, I also object to question number 10, "State whether or not you consider it a reasonable careful thing to do for a fisherman to start his fire with coal oil?"

The Court: The objection will be sustained.

Mr. McCord: We offer in evidence question 10 put to the witness in the deposition being read, as a part of his testimony, and offer to prove by him the facts stated in said answer.

Mr. Arctander: An objection, for the same reasons.

The Court: Objection sustained.

Mr. Arctander: Also question 11, "Do you think they ought to start fire with coal oil?"——

The Court: Same ruling.

Mr. Arctander: —as calling for a conclusion.

Mr. McCord: Same offer.

Mr. Arctander: Same objection.

The Court: Same ruling.

Mr. Hadley offered in evidence the deposition of Jens Foldvik, which he read down to and including the answer to Interrogatory 8, whereupon:

Mr. Arctander: I want to enter the same objection, as to limit of time, to 9, 10 and 11. He only says he has been in the oil

279 house, don't say when.

The Court: Objection overruled.

Mr. Arctander: Exception.

The reading of said deposition was here continued and concluded.

Mr. Hadley here offered in evidence the deposition of W. W. Council, which he read in evidence.

(The court here took a recess until 1.30 o'clock this afternoon.)

Afternoon's Proceedings, Tuesday, Sept. 10, 1918.

Dr. MILTON G. STURGIS, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(Mr. McCord:)

Q. What is your name?
A. Milton G. Sturgis.
Q. What is your profession?
A. Physician.
Q. Are you practicing in the city of Seattle?
A. I am.
Q. How long have you been practicing?
A. Been here fourteen years, over.
Q. Are you a licensed physician and surgeon under the laws of the state of Washington?
A. I am.
Q. Where did you——

280 Mr. Arctander: We admit the qualifications of the doctor.

Q. (Continuing:) —have your training?
A. At Harvard Medical School.
Q. And how long have you been in the active practice?
A. Fifteen years.
Q. Where is your office?
A. In the Cobb Building.
Q. I will ask you if you have examined Mr. Ole Sandanger, the plaintiff in this case, in the last few days?
A. A week ago, the evening of September 4th.
Q. And to what extent did you examine him?
A. I went over him—had him stripped down to his waist, went over his face, chest, throat, nose and his abdomen.
Q. You examined his eyes?
A. I didn't examine the vision, but I examined the eyeballs.
Q. Just state, doctor, in what condition you found the plaintiff?
A. The plaintiff is in good physical condition. He has a firm layer of fat over his body, which shows that he is not suffering from mal-nutrition, his skin is tense over the fat. Over his face he has some—shows evidences of burns. Under his lips he shows scars. The tip of the nose and on either side the alley in the midline was also burned and scarred, a formation of scar tissue. The circumference of the left ear, particularly the top, shows scars, and his face is a little bit rough, and there is a little touch here, about an inch long, up over his left eye, while out over the side in front of the ear, that shows a very slight superficial scar. That shows that
281 the burns there in those particular points were sufficient to go through the layer of skin. His hands are browned, from which it is fair to assume that they were burned at the same time, but not deeply.

Q. How many stages of burns are there, doctor?

A. There are three stages of burns. Burns are divided into three stages: First, the superficial that one has in a slight burn, as with fairly warm water over your hands, the hands are red, but they don't blister. The second stage is the blistering stage, where they become sufficiently deep so that the serum wells up above the superficial skin and lifts that from the tissues below. And then the third stage is where it is burned through the skin, and that is accompanied by scar formation.

Q. Now, so far as the plaintiff is concerned, are there any burns of the first stage?

A. They would not show at this time. A burn of the first stage heals without leaving any mark behind it, except a reddening, which proceeds up to a certain time, and nature absorbs that.

Q. How about the second stage?

A. The second stage heals in the same manner.

Q. And how about the third?

A. The third stage leaves a scar—leaves a scar, depending on the area burned, the entire area where it is burned through, and in his case you see those scars are very slight.

Q. What have you to say, doctor, as to whether or not the
282 plaintiff would suffer pain from those burns as they now appear at this time?

A. It would be quite impossible.

Q. When does the pain cease from a burn?

A. As soon as they are healed over. They pain because the air gets to the raw surface. That may last so long as they are being dressed and the dressings pulled off the granulations, and the air penetrates the surface. And that disappears very quickly; as soon as nature forms a film properly, the pain ceases.

Q. Assuming that the plaintiff left the hospital with the burns healed, what would you say as to his suffering pain after that time, six weeks afterwards?

A. In my opinion, I think it would be entirely impossible for him to suffer pain.

Q. Did you examine him with regard to his stomach?

A. I went over his—I didn't take an X-ray, but I went over his stomach, without finding any evidence of any enlargement, and the fact alone of his superficial fat is so pronounced and he is in such excellent physical condition, would not warrant a supposition that he has any trouble with his digestion in any way. He is the picture of excellent nutrition. He gets good food and he digests it.

Q. What effect would the burns that the plaintiff has sustained have upon the man's ability to perform ordinary laboring work?

A. It should not affect him in the least, not in the least. He is able to breathe, he is able to—the scars on his face do
283 not in any way interfere with his movements of his facial muscles; the scar on his nose does not interfere with his breathing; and the scar over his ear certainly does not interfere with his hearing in any way. They are small scars which——

Q. His hearing is good, is it?

A. As near as I could ascertain, yes.
Q. What about his eyes?
A. There is no scar at all, no scarring on the eyeballs. His eyelids are not scarred.
Q. That shows that they were not burned, does it?
A. Any defective vision he may have would be there before the burn, would not be caused by the burn itself, or the flash.
Q. The fact of his wearing spectacles, or having defective vision, you think would not result from the burn?
A. Yes, that is something he had before.
Q. Could not result from burn?
A. Could not result from burn.
Q. Why do you say that, doctor?
A. I have had some personal experience. I was burned almost as badly as he, in an explosion, which burned me practically in the same place—burned my face and hands, but it did not produce scars, and at that time I suffered the pain that ordinarily goes with those second degree burns. Mine was just on the verge of the third degree. As soon as it was healed it was over with, didn't affect my vision, my vision was the same after that it was before, bore the same degree of correction.

Q. In a burn of this kind, such as plaintiff has sustained,
284 resulting from an explosion, either gasoline or kerosene,—did you find any indications of any injury to his internal organs, stomach——
A. No, his lungs were absolutely clear.
Q. —by inhalation?
A. There is no evidence of any scarring in his nose or throat; his lungs are clear; the lungs show no evidence of disease; the palpation of his belly showed no tenderness over his stomach, no evidence of any interference with nutrition.
Q. Did you make a manual examination of those parts?
A. Over his stomach, yes sir.
Q. You noticed on his hands that brown——
A. Yes.
Q. Was that permanent or will it pass away?
A. That will pass away.
Q. How long——
A. I grabbed the——

Mr. Arctander: Never mind what you did, doctor.

A. I am speaking—I am just basing my answer on my own personal experience.

Mr. Arctander: I object to what the doctor himself found.

A. And on some knowledge of burns, as treated in the hospitals. That should entirely disappear within a year or two.
Q. Is there any tenderness?
A. No, there is no interference. There is absolutely not enough burn to interfere with the use of his hands. He should use his hands as well now as he ever did.

285 Q. Is the tenderness, the thinness of the skin on his hands or on his face liable, when any exertion is made, to crack?

A. Crack? I think not.

Q. And what have you to say, doctor, as to his physical condition at this time?

A. I think his physical condition is excellent.

Q. What weight is he? Did you weigh him?

A. I didn't weigh him, but he is fat; he is over-weight.

Q. What would you say as to whether or not his weight was normal, or otherwise?

A. I should say he is above the average, decidedly over the average.

Q. You see nothing in him that would prevent him from engaging in any sort of physical labor?

A. No, I see nothing that would prevent him from engaging in any sort of physical labor.

Cross-examination.

(Mr. Arctander:)

Q. Doctor, when you examined this man, you were hired by defendant to do so, you were employed by them to examine him?

A. I was called up by Mr. McCord and asked to examine this man——

Q. And he was sent up there at their request?

A. To my office, apparently.

Mr. McCord: With your consent.

Mr. Arctander: Why, certainly, certainly. I am not going to keep anything under the table. That is all, doctor.

(Witness excused.)

286 SAMUEL J. STRONG, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(Mr. McCord:)

Q. What is your full name?

A. Samuel James Strong.

Q. Where do you live, Mr. Strong?

A. 3706 California Avenue.

Q. And what is your business?

A. Paymaster.

Q. For what firm are you employed?

A. Nilson & Kelez Shipbuilding Corporation.

Q. How long have you been employed by them?

A. Since April 24th.

Q. Are you acquainted with Mr. Ole Sandanger, the plaintiff in this case?

A. Yes, I know him. I don't——

Q. Has he been working for the firm of Nilson & Kelez Shipbuilding Corporation?
A. Yes sir.
Q. Have you prepared from the books of that firm a statement of the time, the hours and days, that he has put in at your firm since May, 1918?
A. Yes, sir.
Q. I will call your attention to defendant's exhibit for identification number "3," and ask you if that is the statement taken by you from the books of the Nilson & Kelez Shipbuilding Corporation?
A. It is a copy of the statement.
Q. You took it yourself, did you?
A. Took this myself.
287 Q. And it is a correct transcript of it?
A. It is, absolutely.
Q. From that statement, are you able to state what date Mr. Sandanger commenced work at that corporation?
A. Commenced to work——

Mr. Arctander: I object to that—it shows for itself—the statement.
Mr. McCord: Well, it doesn't show——
Mr. Arctander: You may have the statement.
Mr. McCord: I want to explain the statement, as to what it means.
The Court: Objection overruled.

(Mr. McCord:)

Q. Does it show——
A. On May 20th.
Q. How long did he work, from May 20th until June 1st, how many days?
A. To June 1st, about—(examining) ten.
Q. Ten days?
A. Yes.

Mr. Arctander: He worked ten days, according to that statement?
Mr. McCord: Yes.

(Mr. McCord:)

Q. And does that statement show the number of days and dates on which he worked, the number of hours per day?
A. Yes sir.
Q. The first column on defendant's exhibit number "3" shows the days of the month, the different months, does it?
A. The days of the different months.
Q. And the second shows the number of hours per day
288 that were worked by him?
A. Yes.
Q. And the next column shows the total for the week; that means the amount of money that was paid him each week?

A. The earnings, yes.
Q. The earnings each week. And the next place shows the date of what?
A. The date—consecutively the date.
Q. Oh, yes, consecutively.

Mr. Aretander: The same thing.

(Mr. McCord:)

Q. Yes, the same thing. And the total amount of money paid to him was how much?
A. $287.64.
Q. The total number of hours put in was——
A. 531½ hours.
Q. And at eight hours a day, that would be how much?
A. About sixty-one days.
Q. Sixty-one days?
A. Sixty-one and a half.
Q. Yes.

Mr. McCord: I offer in evidence defendant's exhibit number "3."
Mr. Aretander: I have no objection, only I want to ask the witness some questions.

By Mr. Aretander:

Q. Those dashes on the statement show the days that he did not work any?
A. Yes sir.
Q. Didn't work at all. Part of them were Sundays and
289 part of the other days, Sundays right after the line?
A. No sir. I don't think there are any Sundays in there, are there?
Q. Oh, yes.

(Mr. McCord:)

Q. See if there are any Sundays there (handing paper to witness).
A. Oh, yes, Sundays——

(Mr. Aretander:)

Q. Each Sunday follows the larger dash, doesn't it?
A. Yes, that is right. Sundays are in there.

(Mr. McCord:)

Q. It does show Sundays, does it? Does it show holidays?
A. It shows all days.

(Mr. McCord:)

Q. All days?
A. All days.

(Mr. McCord:)

Q. Right straight through?

(Mr. Arctander:)

Q. All holidays with dash opposite to the date, that shows that he did not work that day?
A. That he did not work that day, no sir.

Mr. Arctander: That is all. We have no objection.
Mr. McCord: I offer in evidence defendant's exhibit number "3."
The Court: It may be admitted.

Paper referred to was marked "Defendant's Exhibit "3."

(No cross examination. Witness excused.)

290 FRANK WRIGHT, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(The Clerk:)

Q. What is your full name, Mr. Wright?
A. Frank Wright.

(Mr. McCord:)

Q. What is your name?
A. Frank Wright.
Q. Where do you live, Mr. Wright?
A. I live on Lummi Island, about six months of the year, and Seattle six months of the year.
Q. Are you connected with the Carlisle Packing Company, the defendant in this case?
A. Yes.
Q. In what capacity?
A. President and manager.
Q. How long have you occupied that relation?
A. Ever since it organized, 1902.
Q. Are you acquainted with Mr. Sandanger, the plaintiff in this action?
A. Yes. Since the accident, not before.
Q. You did not attend to his employment personally, then, did you?
A. No.
Q. Now, I want to ask you, Mr. Wright, whether your company operated a cannery at Cordova, Alaska——
A. Yes sir.
Q. —in the year 1917?
A. Yes sir.
Q. During that year and the year 1916, from what place or source did you procure your kerosene?

291 A. We had a contract with the Standard Oil Company, of Seattle. We bought all of our oil—all of our gasoline and kerosene, from the Standard Oil Company, except that——

Q. In what sort of containers was it bought?

A. Well, in five gallon cans and one hundred and ten gallon drums.

Q. And the kerosene, how was that bought?

A. Well, sometimes in drums and sometimes in——

Q. What was the size of the drums?

A. They are one hundred gallon or one hundred and ten.

Q. Any fifty gallons?

A. Yes, we did use fifties.

Q. How were they indicated, what marks were on these drums that indicated whether they were kerosene or gasoline?

A. The kerosene was all—the ends of the drums painted white.

Q. And the gasoline, how was that marked?

A. Red. It was painted red.

Q. When you purchased it from the Standard Oil Company here marked as you stated, was it taken to Cordova in the same condition as it was when you bought it?

A. Yes.

Q. The Carlisle Packing Company owns certain fishing boats—No. 3, C. P. C. No. 3?

A. Yes.

Q. No. 2?

A. Yes.

Q. Are you familiar with that boat?

A. Yes, I have seen it.

292 Q. What is the size of it?

A. I think it is about 36 feet.

Q. 28 feet.

(Mr. Aretander:)

Q. How much, 36?

A. 28 feet, I guess it is.

Mr. Aretander: 28 feet.

(Mr. McCord:)

Q. You had different sizes, did you?

A. Yes sir.

Q. Well, assuming it was a 28 foot boat, what was its value?

Mr. Aretander: Objected to as immaterial and irrelevant.

A. I think about——

Mr. Aretander: Wait a minute, Mr. Wright.

The Court: Objection overruled.

A. About $1,500.

(Mr. McCord:)

Q. Worth that at the time?
A. That is about what it cost to build.
Q. That was in 1917, and on March 7th it was worth about that?
A. Why, yes, I think so.
Q. What is it worth now?

Mr. Aretander: Objected to as immaterial, irrelevant and incompetent.
The Court: I will overrule the objection.

A. It is not worth any more than that.

Mr. Aretander: What is that?
The Court: I will overrule the objection.

(Mr. McCord:)

Q. What is it worth now?
A. It is not worth any more than fifteen hundred.
Q. Did you get any gasoline for use in your plant in 1917,
293 at Katalla?
A. No, they don't make—gasoline, yes.
Q. Yes.
A. Not gasoline——
Q. I say, did you get gasoline there?
A. No, distillate.
Q. Distillate?
A. Yes.
Q. Did you get any kerosene there?
A. No. They don't make it.
Q. They don't make kerosene at Katalla. Did you buy your kerosene from any other source than the Standard Oil Company?
A. No.

Cross-examination.

(Mr. Aretander:)

Q. Mr. Wright, I suppose you were not down to see these different drums when they were shipped, you were not present and saw them shipped?
A. I think I was. I think I loaded this——
Q. When, at what time?
A. In April or May—no, April.
Q. April?
A. No, it was in May.
Q. 1917?
A. May. I loaded a boat down here with one hundred and ten drums, or something like that, and this was the lot.
Q. In April or May, 1917, is that what you mean?
294 A. Yes, we sent a new boat up there.
Q. Can you not answer me whether it was 1917 or not?

A. Yes, 1917.
Q. That is the only time you know when you had anything to do with any that was shipped?
A. Yes, that is the only——

Mr. McCord: I move to strike it out as immaterial if it was sent out after March, 1917.
The Court: Motion denied.

(Mr. Aretander:)

Q. You were not there at any other time and saw any shipments?
A. No.

Redirect examination.

(Mr. McCord:)

Q. Did you have anything to do with shipping in 1916, prior to March 1st, 1917?
A. No.
Q. You had no personal knowledge?
A. I just loaded this one boat personally.

(Witness excused.)

295 HARRY W. BRINGHURST, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows.

(The Clerk:)

Q. What is your name?
A. Harry W. Bringhurst.

(Mr. McCord:)

Q. Where do you live, Mr. Bringhurst?
A. Seattle.
Q. And how long have you resided in Seattle?
A. I came in 1889.
Q. And by whom are you employed at the present time?
A. The city of Seattle.
Q. How long have you been employed by the city of Seattle?
A. Well, not continuously, I was out one year; about eleven years.
Q. And how long recently?
A. Seven years.
Q. And in what capacity, what are your duties?
A. Fire Marshal of the city.
Q. How long have you been Fire Marshal?
A. Seven years.
Q. Were you connected with the fire department of the city of Seattle prior to that time?
A. I was chief of the fire department before.
Q. Have you had any experience in fires resulting from explo-

sions in the city of Seattle during recent years, during the time you have been connected with the city?

A. I have.

Q. I will ask you if you are familiar with the relative properties of gasoline and kerosene in so far as explosiveness is con-

296 cerned?

A. I am, as I would find them at fires in Seattle and other places.

Q. Have you had any experience in chemistry, in studying the chemistry of these oils, gasoline, kerosene, distillate and so on?

A. Yes.

Q. Where did you study it?

A. Well, that was just my reading as Fire Marshal.

Q. You keep familiar with——

A. I have not studied chemistry in a great many years.

Q. But you have studied it?

A. I have.

Q. You are familiar with—you have had practical experience in handling gasoline and kerosene, have you, as well as in explosions resulting therefrom?

A. I have.

Q. Mr. Bringhurst, assuming that on the 7th day of March, 1917, at Cordova, Alaska, about the hour of somewhere between twelve and three o'clock, upon a boat out in the water, there was an explosion, either from kerosene or gasoline; assuming that the boat was about 28 feet long and contained a cabin that was enclosed, about six feet from the floor to the ceiling, about ten feet long and about six feet wide, and that it was about twelve inches from the deck to the water; that there was a small gasoline engine in the boat, with sufficient power to run her at the rate of six miles an hour; that the engine had been running and the boat running almost continuously since eight o'clock in the morning; and that from the deck

297 down to the cabin there were certain steps, about two or three of them, and that at the corner of the cabin on the deck there was an opening folded back so that it opened in that part sufficient for a man to enter and go down the stairway; that there was a stove, a sheet iron stove, with the exception of the top, which was cast iron, with four lids, or two, it doesn't matter, and that the lids were off; that it had a firebox which was about twelve inches by twelve or eighteen; the stove was two feet in length, or about twelve inches wide, or that it was two feet wide; that prior to this time when the explosion occurred, there had been a fire in the stove and that soup had been heated upon it, meat had been cooked and coffee boiled; that after the soup and meat had been taken out and eaten that the fire was replenished with wood, good substantial wood ends from lumber from a mill, and that the coffee had been boiled and been taken out, and that a fire remained in the stove for about three-quarters of an hour, and that when the coffee was finally removed from the stove there was a bed of blazing coals all over the firebox, and that in the bottom of the stove there was four inches of fine gravel and

sand, upon which the fire rested, and that the stove was upon a bench, upon sort of a rack over a bench, about two feet or eighteen inches from the floor, and that within twenty minutes or fifteen or thirty minutes, we will say, after the coffee was taken off, a man went down to start a fire in the stove; that he placed wood in the firebox with the lids off, the front of the stove open; that he
298 took a can of oil and poured the oil in upon the wood, and while he was pouring the oil upon the wood he was looking at the engine, which would require him to turn around, turn his head away from the stove in order to see the engine; and that he dropped the can down in his right hand, struck a match with his left hand and threw it into the stove where this oil had been poured upon the wood; and that as the result of those actions there was a flare-up or explosion, that resulted in the plaintiff being burned about the ears and nose and face and hands and legs; that immediately after the explosion, the whole interior of the cabin was filled with flames; that the coal oil can that he held in his hand was smashed and the oil exploded, and that the flames burned the interior of the cabin to such an extent that it was black; that it threw the plaintiff across this cabin towards the bow of the boat; that he was partially unconscious; that the plaintiff then came out of the cabin, went up on the deck, and a few seconds afterwards the hatchway—this entrance to the cabin—was closed; assuming that a coal oil can, or an oil can, I will put it, was placed underneath the bench, under the stove, and that it had been there during all of the time of this fire that for forty-five minutes had been in the stove and during the time that the engine had been in the stove and during the time that the engine had been running, the cabin in this condition; I will ask you, assuming these facts to be true, are you able to state whether such an explostion could have resulted from kerosene as well as from gasoline?

299 A. I would say that it could.

Mr. Aretander: We now move to strike that out. I want to enter an objection——

A. I would say yes.

Mr. Aretander (continuing): —to the question. I move to strike out that answer, so that I can make an objection. I will let it go until he asks him.

(Mr. McCord:)

Q. In your opinion could it have resulted from kerosene as well as gasoline?

Mr. Aretander: Wait. Don't answer, please. I object to this for the reason that the hypothetical question propounded to this witness is defective in several particulars, not a proper question under the testimony on either side, first in that it assumes that the testimony shows that there was *a* any cooked there, which it does not.

Mr. McCord: Mr. Stensland testified to that.

The Court: I think there is no testimony on that.

Mr. McCord: Mr. Stensland said so.

Mr. Arctander: No sir. Mr. Stensland said he carried the meat up, but he didn't claim any meat was cooked.

Mr. McCord: He said they cooked dinner and that part of it was meat.

The Court: I don't think it is very material.

Mr. Arctander: No, I only call attention to these things, which I think I must under the law, in order to make a good objection. Further, that it is stated that one of the facts assumed in this question was that the fire was replenished after the soup and meat
300 had been taken out, there being no evidence to that effect.

Mr. McCord: Mr. Stensland testified to that, Your Honor.

Mr. Arctander: All right. You take your chances on it. Further, that the fire remained in the stove three-quarters of an hour. There is no testimony of that. That it further contains this assumed fact that while the party who lit the fire was looking at the engine, he turned his head away from the stove. There is no testimony of that kind.

Mr. McCord: There is.

Mr. Arctander: Well, I will tell you what the testimony is. The testimony is of a can——

The Court: Make your objection.

Mr. Arctander: All right. And further assuming that the testimony shows that the oil can was placed under the bench, under the stove, which I do not think there is any testimony on.

Now, as to this in regard to turning away, I call Your Honor's attention to the fact that the only evidence there is is the testimony of Mr. Peterson, who claims that after the accident Mr. Utness—he was asked to repeat his language and said Mr. Utness told him so. Of course, that does not constitute evidence before this jury or before this witness of that fact—evidence that was brought out simply for the purpose of impeaching Mr. Utness and not to show the substantive fact. I am not very insistent upon it, but I want to make this point that the record will show we object to the question for that reason.

301 The Court: I overrule the objection.

(Last question read.)

A. It could.

(Mr. McCord:)

Q. Mr. Bringhurst, what is the result of pouring kerosene upon wood placed upon hot embers or hot gravel in an enclosed stove such as the one I have indicated to you, in regard to the generation of vapors?

A. The kerosene would very soon vaporize.

Q. And when it vaporizes, what is the result, when this vapor comes in contact with a lighted match?

A. The vapor ignites.
Q. And what follows?
A. A very rapid ignition, which amounts to an explosion.

(Mr. Arctander:)

Q. A very rapid what?
A. Ignition.

Mr. Arctander: Ignition.

(Mr. McCord:)

Q. And does this require the introduction of air, oxygen, to come in contact with it?
A. It will not explode without a certain mixture of air.
Q. The lids were off the stove. Would that afford a sufficient mixture of air to warrant the explosion?
A. Yes.
Q. In your experience in the fire department of this city, have you had anything to do with kerosene explosions resulting from the lighting of the fire or attempted lighting of the fire where the can or oil exploded too?
A. Yes sir, a great many.
Q. Where you knew it was kerosene?
A. When I knew it was kerosene.
302 Q. What is the difference between the explosion of gasoline and the explosion of kerosene, when kerosene has been heated in the way you have indicated?
A. You mean of their vapors?
Q. Vapors, yes.
A. I don't think there is any particular difference.
Q. At what temperature, Mr. Bringhurst, will the vapors be generated from kerosene, coming in contact with——
A. It depends on the grade of kerosene, the amount of impurities in it. I should say 120 degrees, or thereabouts.
Q. Gasoline would be what?
A. Gasoline commences to give off vapor at zero, or less.
Q. When the vapor that is generated from the coal oil or kerosene comes in contact with a lighted match, will that cause an explosion, the same as gasoline?
A. The same as the gasoline vapor?
A. Yes.
A. Under the same conditions it would.
Q. Yes.

(No cross-examination. Witness excused.)

303 W. M. FLINN, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(The Clerk:)

Q. What is your name?

(Mr. McCord:)

Q. What is your name?
A. W. M. Flinn.
Q. Where do you live, Mr. Flinn?
A. Seattle.
Q. By whom are you employed at the present time?
A. Carlisle Packing Company.
Q. How long have you been employed by that company?
A. June 1st.
Q. Of the present year?
A. Yes sir.
Q. By whom were you employed prior to that time?
A. Standard Oil Company.
Q. How long were you employed by the Standard Oil Company?
A. January, 1913.
Q. When did you leave their employment?
A. May 31st.
Q. 1918?
A. 1918.
Q. During the time that you were employed by the Standard Oil Company, what were your duties with regard to the sale of gasoline, kerosene, distillate and so forth?
A. Well, for practically two years I was salesman on their boat that makes every town in the Sound and distributed coal oil, gasoline and distillate.
Q. On the Sound?
A. And for the balance of the time I was assistant to the
304 manager in the city.
Q. And during the year 1916 and '17 what were your duties?
A. I was—most of that time was taking care of the canneries, seeing that they got their orders taken care of.
Q. Did the Standard Oil Company, during 1916 and 1917, furnish kerosene and gasoline and distillate to the Carlisle Packing Company, the defendant in this case?
A. They did.
Q. In what quantities?
A. We shipped them——
Q. With regard to how much they needed, all of it or only part?
A. We thought we shipped them all of it.

(Mr. Arctander:)

Q. What is that?

A. We thought we shipped them all of it. We thought we had all of their business. We had no reason to believe anyone else was getting any of it.

Q. Did the Standard Oil Company in 1916 and 1917, prior to March 7th, ship any kerosene and gasoline to Cordova, Alaska, to the Carlisle Packing Company?

A. Yes sir.

Q. In what sort of containers was it sent?

Mr. Aretander: Was it 1916 and 1917?

Mr. McCord: 1916 and 1917, prior to March 7, 1917.

Mr. Aretander: All right.

A. We made shipments to them of coal oil, which they call "Pearl Oil," in 54-gallon export barrels, that is, what they call a small 54-gallon drum. We also shipped gasoline to them, I think, if
305 I am not badly mistaken, as high as 150 cases at a time. Sometimes we would make shipment of gasoline in 108-gallon drums. They averaged about 106 to 110. We also made shipments to them in distillate, in 108 and 110-gallon drums.

Q. How were these kerosene drums marked, so as to indicate the contents?

A. All kerosene drums, it don't make any difference what size container, whether 54 gallons or a hundred and eight, is stenciled white, with a large ring stenciled around each end, saying "Standard Oil Company" in black letters, and in the center of the drum, or export barrel, no matter which it is, is "Pearl Oil" or "Best Lamp Oil."

Q. How were the ends of the barrels or drums painted?

A. White—kerosene drums are white.

Q. The kerosene drums are white. How were the gasoline drums painted?

A. Red, unless otherwise—some canneries want all their drums yellow.

Q. Is that the invariable rule?

A. Invariable rule is red. The Interstate Commerce rule requires that.

Q. How about the invariable rule as to kerosene?

A. Always white.

Q. Does the law or the regulations require that?

A. The regulations require white.

Q. You had charge of these shipments yourself, did you?

A. I took the orders.

Q. You saw them shipped out, did you?

306 A. I have seen thousands of drums shipped out. I never, of course, went down and supervised the shipment of any particular order, but I have seen them, and I have helped fill thousands of drums.

Cross-examination.

(Mr. Aretander:)

Q. This painting on the ends of the drums, what was the nature of it, was it yellow paint?
A. I could not tell you the exact ingredients of the paint. I know part of it is——
Q. Was it water colors?
A. No sir, it was not. It will not wash off.
Q. What?
A. It will not wash off.
Q. It will not wash off?
A. No sir.
Q. Even standing around in the rain in Alaska?
A. We have had drums on the docks——
Q. Let me ask you——
A. I wanted to explain to you why it will not wash off.

Mr. Aretander: That is all.
Mr. McCord: That is all. We rest, Your Honor.

(Witness excused.)

3061½ *Rebuttal.*

307 Mr. Aretander: May it please Your Honor, I offer in evidence—I have copies here—the stipulation to read the affidavit on the trial, of Isaac Utness, who was a witness in the case, and the witness John Peterson was asked an impeaching question as to him, and counsel stipulated—without their having asked that question from Mr. Utness, and I objected to it at the time of taking the deposition, and then we agreed that I might take this affidavit and read it in full, either in rebuttal or in direct, with the same force and effect as if given on the trial. (Reading stipulation.) I offer this in evidence now.

Mr. McCord: Very well.

Mr. Aretander: Ladies and gentlemen, this is the affidavit of Isaac Utness, about which you heard me read the stipulation, that it be read with the same force and effect as if he testified.

Mr. Aretander here read the affidavit of Isaac Utness on file herein, which reads as follows, omitting the formal parts:

"Isaac Utness having been first duly sworn, deposes and says:

"I am the identical person whose deposition was taken in the above entitled action at the office of Hadley & Hadley, in the Colman Building, Seattle, Washington, on the 4th day of February, 1918, by and before Earl B. Richard, Esq., a Notary Public.

"I have been shown a copy of the deposition of John Pederson, the port engineer of defendant, taken in the above entitled action on February 14th, 1918, before said Earl B. Richard, Notary Public,

at the same place where my deposition was taken on the 4th day of February, 1918, furnished by said Earl B. Richard, Notary Public, and have carefully read what said John Pederson in his deposition did state as to any conversation or conversations claimed by
308 him to have been had with me and have familiarized myself with any and all statements he claims I have made to him, and after carefully pursuing his said deposition I state under oath that I never had any conversation with him at the dock of the defendant's cannery near Cordova, Alaska, or any other place either at five o'clock in the afternoon, or evening of March 7th, 1917, or at any other time, either on said day or on any other day during the month of March, 1917, concerning the accident to plaintiff Ole Sandanger.

"I further state that I did not, at that time or at any time, tell John Pederson that Ole Sandanger was, after we had had our lunch, told by Ivar Stensland to go and wash the dishes, or that he went into the forecastle to heat the water, or that I went down in the forecastle to oil the engine, or that when I went down in the forecastle Ole Sandanger was holding the oil can in both hands and was looking at the engine, or that then the flame flared up from the stove; nor did I at that or any other time tell him that Sandanger was then pouring the oil into the stove; nor did I at that or any other time tell Pederson that the engine was 'missing' at the time, nor that plaintiff at the time he was pouring the oil into the stove was standing in front of the stove; nor did I at any time make any statement to Pederson of a similar purport or character, or to such effect.

"Although I made no statement to that effect to John Pederson, it is nevertheless, as a matter of fact, true:

"(1) That Ivar Stensland after our lunch on the day Ole Sandanger was hurt told him to go down and wash the dishes.

"(2) That Sandanger then went down to the forecastle to heat the water for that purpose.

"(3) That I went down in the forecastle to oil the engine.

"(4) That Ole Sandanger in order to pour the oil from the can while pouring the oil into the stove, had to hold the can with both hands, as he had to hold the handle with one hand and with the other tip the bottom of the can so that the oil would come out of the spout.

"(5) But that when the flame flared up from the stove he
309 was not pouring the oil in the stove, but was lighting and throwing into the stove a match.

"(6) The engine had been 'missing' before, but not at the time of the accident.

"(7) Ole Sandanger could not see the engine from where he was standing at the time of the accident.

"I further state that it is true that I met John Pederson and had a short conversation with him on Pike Street in Seattle, Washing-

ton, about the first day of February, 191-, but it is not true that he at that time asked me if I remembered what I had told him about the accident to plaintiff nor is it true that he told me about what he claimed I had said to him in reference to such accident.

"At this time there was nothing whatsoever said about me ever having told him anything about the accident.

"The conversation between us at that time consisted in his telling me that he was going to be a witness for the company in the case, but that he did not know a thing about the explosion and he there and then asked if I could tell him anything about it. I did not answer him.

"Further affiant saith not.

(Signed) "ISAAC UTNESS."

Mr. Aretander: I might perhaps, while I am at it, read the balance of the affidavit of John Holland, offer that in rebuttal—the four last lines of page 2 and all of page 3—John Holland, whose affidavit I read before in direct examination partly (reading):

"In order to get the gasoline out of the drum, I during all of this time in February and March, 1917, used a pump by the aid of which I pumped the oil out from an opening in the top of the side of the drum which was lying upward.

"There were no faucets in the end of either of the drums up to the time when plaintiff was burned or for some time there-
310 after. But some three or four weeks after he was hurt they got some drums in there with a faucet in the end, but not before."

OLE SANDANGER, the plaintiff, being recalled in rebuttal, testified as follows:

(Mr. Aretander:)

Q. Mr. Sandanger, you heard the deposition read, of Ivar Stensland——

A. Yes sir.

Q. —this forenoon, in which he stated that at the time of the accident there was a five gallon gasoline can standing on the other side of the engine in the lower bunk. You were allowed to testify that there was a five gallon can there when you were out before with the boat, during those twenty days or two weeks that you were out with the boat. I will ask you to state whether or not you had used, during that time when you were out with the boat two weeks, or whatever it was—whether or not you had used any of the contents of that five gallon can of gasoline, and for what purpose?

A. Used it for priming oil.

Q. When you first started into that boat and first used it for priming oil——

A. Yes.

Q. —the contents in it, put into the little can—how much, about, of gasoline was there in that can then?

A. There was about four or five inches in the can when I started in the boat.

Q. Four or five inches from the bottom?

A. Yes, from the bottom.

311 Q. Otherwise it was empty?

A. Yes.

Q. Now, the last week, or you stated that about four days before the accident to you, you went into the oil house with this little red can to get some priming oil from the gasoline can?

A. Yes sir.

Q. Four days before you were hurt?

A. Yes sir.

Q. At that time what had become of the oil that was in this five gallon can?

A. Well, because used it all up; there was no more in the five gallon can.

Q. There was no more left at that time?

A. No sir, there was no more left. That was the reason I went in.

Q. Was that filled again while you were there at all?

A. No sir, it was not filled up.

Q. At the time of this accident, this explosion, it was then an empty five gallon can that stood there, was it?

A. Yes, she was empty.

Q. Was there anything over it besides——

A. Well, all the clothes we had with us we throwed up—we used to throw up in the lower bunk there and they was over the can and all around there.

Q. Thrown all over the can?

A. Yes.

Q. You heard Mr. Stensland's testimony as to what you did on this trip?

A. Yes sir.

312 Q. That you came down to the point at the opening of Boswell Bay about eleven o'clock?

A. Yes, about eleven o'clock.

Q. And that was about right?

A. Yes, about right, about eleven o'clock.

Q. He stated that then you went all around this bay and took again a trip of two miles or more each way before you went up and loaded the sand. Now, what were the facts in regard to that?

A. No.

Q. Did you go around that bay that morning?

A. No sir, we didn't go around the bay, we went about 300 yards, about a thousand feet, about 900 feet inside of the mouth.

Q. From this point, the opening of the bay?

A. Yes.

Q. About 300 yards?

A. About 300 yards.

Q. And what did you do there at that place when you came to that?

A. Well, we put Stensland ashore. He was going to look for trap piling there.

Q. You put Stensland ashore?

A. Yes.

Q. And after you put him ashore, what did you do?

A. Then we went across the mouth and load up the sand right on the other side.

Q. Right on the other side?

A. Yes.

Q. Where did you put him ashore, can you come and
313 show the jury about the point where you put him ashore, whereabouts?

A. Right ashore, just inside of that point there.

Q. Between the rocks and the shore there?

A. The rocks and the shore.

Q. And that was right across the bay from the point where you first came in?

A. Yes. It was on the starboard side when we came into the bay.

Q. What did you do after you had put him ashore at this point?

A. Well, we went across to the other side and load up the boat.

Q. Back again to the point where you entered the bay?

A. Yes, we crossed the other side of the bay.

Q. You crossed the other side of the bay from where you left Stensland?

A. Yes sir.

Q. And what did you do there?

A. Well, we load up the sand.

Mr. McCord: I object to that, Your Honor, as not proper rebuttal.

(Mr. Aretander:)

Q. What did you bring in all this stuff for?

Mr. McCord: Objected to as not proper rebuttal, incompetent, irrelevant and immaterial.

The Court: He went over it, testified to the entire trip, didn't he, before?

Mr. Aretander: No, I didn't ask him. It was not proper for me to ask him that. He only stated what time they left Boswell
314 Bay and how soon after they left the fire occurred?

Mr. McCord: He stated, in his direct testimony, the whole trip that they took. It is not proper rebuttal. We have no opportunity to meet it with any of the witnesses.

(Discussion.)

The Court: Well, let him answer the question. I will overrule the objection. You do not want to go over anything twice.

Mr. Aretander: No, I shall not do that.

(Mr. Aretander:)

Q. After you got back to that point, what did you do?
A. We started to load up the sand.
Q. What?
A. We started to load up the sand.
Q. While Stensland was out of the boat?
A. Yes, he was ashore.
Q. He was ashore?
A. Yes, he was on the other side.
Q. And after you loaded on the sand, what did you do?
A. Then we started up the engine and ran across and got him on shore, in the boat, and then we——
Q. Got Stensland on board and steamed up——
A. Yes, and steamed up the bay.
Q. How long a time did it take from when you reached that bay, at the point of Boswell Bay, until you steamed out again?

Mr. McCord: I object to that as not proper redirect. This is simply going over the same trip that he went before. If he left out anything, then it is his own misfortune.

315 Mr. Aretander: I have not left out any.

Mr. McCord: I don't think he has. He went into it in all the details before. Now we are starting in to try it all over again. We have no witnesses here.

(Discussion.)

The Court: Let him answer the question.

(Mr. Aretander:)

Q. How long a time did it take from the time you got to Boswell Bay until you started out again?
A. It was about an hour.
Q. About an hour?
A. Yes, about an hour.
Q. How about Mr. Stensland—you heard Mr. Stensland's testimony that he waited to take out the sand until he got back again from this trip around Boswell Bay, because he wanted to take it out when there was full tide——

Mr. McCord: I object to that as not proper redirect, Your Honor.
The Court. He has not asked the question yet.
Mr. Aretander: Nothing at all.

(Mr. Aretander:)

Q. Now, what are the facts about that in regard to getting the sand at all when the tide was full up?

Mr. McCord: I object to that as incomptenent, irrelevant and immaterial and not proper redirect.

The Court: Objection overruled.

A. We could not get the sand on board when it was up high tide, because the sand was covered and the ice was laying right—on the high water, the ice was going right down to the water, so we had to take the sand aboard before——

316 Q. Before the high water?

A. Yes. That is what we had to do.

Q. You heard also Mr. Stensland's testimony; three times in giving his deposition, he stated that you volunteered to go, that he just said to the boys "You must go up and fix it" and you volunteered to go?

A. Yes.

Mr. McCord: Objected to as not proper redirect.

The Court: Objection overruled.

(Mr. Aretander:)

Q. Did you or did you not?

A. No, he told me——

Q. Did you or did you not volunteer?

A. No, sir, I didn't volunteer. He told me to go down and do so, and I went down to do what he told me.

Q. I will ask you to state whether or not before you were hurt or at the time when you were in there, in the oil house, there was any fifty gallon drum of any kind there?

A. No, sir.

Mr. McCord: I object, now, Your Honor, and I move to strike that out. That is not proper redirect.

The Court: Yes, he testified fully to what there was in the oil house.

Mr. Aretander: Yes, he testified to what there was, but this is in rebuttal of their statement that there was a fifty gallon drum. I didn't ask him anything about it. Maybe counsel did on cross examination, I am not sure. I didn't recall.

(Mr. Aretander:)

Q. I will ask you whether or not you at any time saw in the oil house any crated gasoline cases?

317 A. No, sir, I didn't see any.

Q. Five gallon cans?

A. No, sir, I didn't see any.

Mr. McCord: I would like for the court to instruct the witness not to answer until I can get an objection in.

Mr. Aretander: You remember that now.

The Court: Give the attorney time to make objections each time.

Mr. Aretander: You remember that now.

A. Yes, sir, I remember that.

(Mr. Aretander:)

Q. Now, I will ask you to state whether or not, after you cam down in the forecastle this time to make the fire—whether or n the engine was "mi-sing" at all?

A. No, she was not "missing" then.

Q. State whether or not you at any time when you were dow there turned away from the stove, looked at the engine?

Mr. McCord: Wait.

Mr. Aretander: No, I waive that question. I will get it just th way he said it.

(Mr. Aretander:)

Q. I will ask you whether or not you at that time, while pourin the oil, were looking at all towards the engine?

A. No, sir, I was not looking at the engine.

Q. You heard the testimony of Mr. Stensland that on this fo noon he got the dinner. State whether or not he got any dinner all, or assisted?

Mr. McCord: I object to that as not redirect. He went into th in the first instance.

The Court: Objection sustained.

318 (Mr. Aretander:)

Q. I will ask you to state whether or not Mr. Stensland had an thing to do with the lighting of the fire there that day?

Mr. McCord: I object to that as not proper redirect. He aske him all about that on his direct examination. There is no u going over the same thing.

The Court: I do not remember. I will overrule the objection

(Mr. Aretander:)

Q. State.

A. No, sir, he didn't have any——

Q. State whether or not he used the coal oil can there at all— Mr. Stensland?

Mr. McCord: I object to that.

A. No, sir.

Mr. McCord (continuing): —as not proper redirect, and incom petent, irrelevant and immaterial.

The Court: Denied. Overruled.

(Mr. Aretander:)

Q. I will ask you to state whether or not it is true, as Mr Stensland stated, that after you were afire and were up on deck

afire, that the other fellows were slapping you with their hats and fanning you?

Mr. McCord: I object to that——

Q. (Continuing:) —the other men?

Mr. McCord (continuing): —as incompetent, irrelevant and immaterial and not proper redirect.

The Court: Objection overruled.

A. No, sir, they didn't do such a thing.

(Mr. Arctander:)

Q. He said you ran around the cabin. State whether or not you did.

319 A. No, I didn't run around the cabin. I was only about—there was six inches outside of the cabin, you couldn't hardly run around the cabin, you had to hold fast. If you run around the cabin and will not have any hand to hold me, I couldn't run around the cabin. How could I?

Q. Did Mr. Stensland have anything to do about telling you to go overboard?

A. No sir, there was nobody told me at all to go over.

Q. Had he got the companionway shut when you went overboard?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Oh, let him answer.

A. Well, I went in the water. I didn't see how they got the fire out at all.

(Mr. Arctander:)

Q. Well, you don't know when the companionway was shut, whether it was before or after you went out overboard?

A. No sir, I went out; I don't know.

Q. Was there any cast iron top or any cast iron lids on that stove?

A. No sir——

Mr. McCord: I object as not redirect.

The Court: Objection sustained. He described the stove fully.

Mr. Arctander: Yes, he described the stove fully. Well, he stated it was sheet iron, I think. Yes, that is right. I will withdraw that.

(Mr. Arctander:)

320 Q. Now, you heard the testimony of Mr. Stensland in his deposition here about the firewood on board that boat that day that you were hurt. Now, I will ask you whether or not there was any either ends of planking or timber ends on board that boat on that day?

Mr. McCord: He has already testified to that. He stated what s of wood was there and the only wood that was there, according his own statement.

The Court: He described, fully, what wood was there.

Mr. Arctander: He described the wood that he used, but I thi it is proper for me to contradict that.

The Court: He told what he thought the wood was, and the oth witness told what he thought, and now it is up to the jury to t what is true. Sustain the objection.

(Mr. Arctander:)

Q. I will ask you to state whether or not there was any place und neath the bench that the stove stood on to rick up any wood?

A. No sir, there was no place, because the side was going up li this. There was three braces on the——

Q. Just answer "Yes" or "No." Was there any place for it the

A. No sir.

Q. How far below was the edge of the floor, was it under the ben or outside of the bench or right even with the bench?

Mr. McCord: I object to that as not proper redirect. He describ the bench fully, the whole interior of that boat.

The Court: Objection sustained.

Mr. McCord: It is for the jury to say.

321 Mr. Arctander: What are you afraid of it for, then?

Mr. McCord: I am not afraid of anything, but I don want you to try this case all over again, if I can help it.

Mr. Arctander: Did Your Honor rule?

The Court: Yes, I sustained the objection.

(Mr. Arctander:)

Q. State whether or not there was any dry wood at all——

Mr. McCord: Objected to.

Q. (Continuing:) —aboard that boat?

Mr. McCord: Objected to as not proper redirect. He describe what wood was there.

The Court: Objection sustained. He covered that fully on th direct examination.

(Mr. Arctander:)

Q. Mr. Stensland stated that about five minutes elapsed fro the time you went down in the cabin until the explosion. Was tha correct? If not, what was the time?

Mr. McCord: He has already stated how long he was in the cabi and all about the explosion.

The Court: Objection sustained.

(Mr. Aretander:)

Q. Please state whether there were any words "Pearl Oil" stamped on any of the drums in the oil house?

Mr. McCord: I object to that as not proper redirect.
The Court: Objection sustained.

(Discussion.)

(Mr. Aretander:)

Q. Stensland stated, also, that at this time when the lunch was made, that Mr.—the fire was made for the lunch, that Mr. Utness was steering. What do you know about that?

322 A. No sir. Mr. John Jorgenson was steering.

Q. Did you hear the testimony of Mr. Sorvik, one of these witnesses, whose deposition was taken up in Cordova a couple of weeks ago, in which he stated—of course, he contradicted himself perhaps—but he stated, at one time, in there, that Mr. Emanual Olson, one of the witnesses for you, was not there a week after he came up, which was a week or two before you were hurt, or two or three weeks before you were hurt. Mr. Sorvik came up. I will ask you to state to the jury whether or not you saw Emanuel Olson around there at any time near the time you were hurt, and, if so, what time?

A. Yes sir, I saw him there four days before, and I saw him two days before I went—and the day before the accident, too, I saw him there.

Q. Four days before the accident and the day before the accident you saw him where?

A. In the blacksmith shop. He was helping the blacksmith.

Q. When what?

A. He was helping the blacksmith—blacksmith helper.

Q. You talked with him there at that time?

A. Yes sir.

Mr. McCord: I object to that as immaterial, Your Honor, whether he talked to him or not.

The Court: He has answered it.

323 Cross-examination.

(Mr. McCord:)

Q. I don't know whether I quite understand you or not. What can of gasoline was it that you say you took oil out of for priming purposes? Some can, you said, was on the boat; what can was it?

A. That was a little red can. She was copper color, she was made of copper, too.

Q. You said you had a small can, that held about a quart, and that you had gone up to the oil house to fill that with this gasoline for priming purposes. I understood you to say to counsel that you

took some oil for priming uses out of some can on the boat, didn't you?

A. Yes.

Q. What can was that?

A. It was a five gallon can.

Q. Well, was that the same can that you used in lighting the fire in the stove?

A. No sir, it was not the same can.

Q. Not the same can?

A. No sir.

Q. What can was it?

A. It was a five gallon can.

Q. A case?

A. Them cans they used to have in there.

Q. A regular five gallon gasoline square can, was it?

A. A square can.

(Witness excused.)

Mr. Aretander: I will offer the balance of the deposition
324 of Emanuel Olson, pages 35 and 36, from line 17 on — 35 I read up to line 17. Emanual Olson, this witness is.

Mr. Aretander here read from the deposition of Emanuel Olson beginning with line 17, page 35, and ending with line 11, page 36.

Mr. Aretander: Then page 38, commencing with the 25th line.

Mr. Aretander here read from said deposition, beginning with line 25, page 38, down to and including line 15 on page 39, whereupon

Mr. McCord: I object as incompetent, irrelevant and immaterial as to how many cans were there after the accident—how many cases of gasoline. The conditions there after the accident have no bearing on this case.

Mr. Aretander: That goes to those questions that Your Honor said are for the jury. These other witnesses were allowed to testify in chief without designating the time.

The Court: I will overrule the objection.

Mr. McCord: My objection goes to all this testimony.

The Court: Yes.

Mr. McCord: To conditions subsequent to the accident.

Mr. Aretander continued the reading of said deposition down to and including line 22, page 39, whereupon:

Mr. McCord: I object to that for the principal reason that——

Mr. Aretander: I will waive it.

Mr. McCord: It is too late.

Mr. Aretander: I will waive that. It is waived right in there when you objected before.

Mr. McCord: All right. Why did you keep on reading then?

Mr. Aretander: Because I didn't see it.

325 Mr. Arctander continued the reading of said deposition, beginning with line 26, page 39, reading down to and including line 18, page 40.

Mr. Arctander: I now offer in evidence the deposition of Andrew Lund, taken on the 30th day of March, 1918, at Mr. Hadley's office, all of us being present.

Mr. McCord: I thought you read part of that yesterday.

Mr. Arctander: No, I read nothing of that nor of Ingvald Sandanger's. Oh, I beg your pardon, Andrew Lund is not the one I meant. I have read part of it.

Pages 7 and 8 I wanted to read—commencing at line 21 on page 7 of the deposition of Andrew Lund:

Mr. Arctander hear read from said deposition, beginning at line 21, page 7, down to and including line 26 on the same page, whereupon:

Mr. McCord: Objected to——

Mr. Arctander (reading): "A. Yes sir."

Mr. McCord (continuing): —as incompetent, irrelevant and immaterial,' and move to strike the answer out.

The Court: Motion denied.

Mr. Arctander continued the reading of said deposition, beginning with line 28, page 7, and reading down to and including line 24, page 8.

Mr. Arctander: Now I will offer the depositions of Louis Stenson and Ingvald Sandanger. They have not been read—any portion of them. The depositions were taken before the same notary, at the same time as Andrew Lund's deposition.

Mr. Arctander here read from the deposition of Louis Stenson down to and including line 5, page 20, whereupon:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial, too remote. He says he never went to Cordova
326 until the 10th of April, more than a month after this accident occurred, and his testimony as to the conditions in the oil house is wholly incompetent, irrelevant and immaterial, and too remote, as showing a condition that might have been changed, and, if it were changed, I don't believe that it is admi-sible as original evidence, at all, or any other sort of evidence.

The Court: I think the Supreme Court holds that where a change is made, you cannot show it.

Mr. Arctander: Only as against the testimony which Your Honor admitted before the jury and testified to by the other parties here, by the other depositions. They testified right along how it was.

The Court: I would have to instruct the jury to ascertain the condition after the accident. The testimony was indefinite, didn't show whether it was before or after. That was the only difficulty with that testimony. This testimony shows it was afterwards.

Mr. Arctander: Yes, but it is the rebuttal of testimony brought in on their part, showing all the way along. It was not limited to before, but was what it was in 1917. Both Mr. Peterson's, the captain, and Mr. Hawkinson are to that effect.

(Discussion.)

The Court: I think I will have to sustain the objection.

Mr. Arctander: Well, that sustains the objection to the whole of the deposition, then, I suppose?

The Court: As to the condition a month or more after the
327 accident.

Mr. Arctander: The following month, from the 10th of April to the 8th of May.

The Court: About the condition of the oil house.

Mr. Arctander: Of the oil house and what there was in it and how the drums were painted and how they were——

The Court: Sustain the objection.

Mr. Arctander: Well, I note an exception. There is also contained in this deposition testimony that he went in there himself to get it and he could not tell which was which, and that he got John Peterson——

Mr. McCord: I object, Your Honor, to counsel testifying as to what this witness testified to, as to what the deposition shows.

The Court: That was the month after?

Mr. Arctander: That was during the month after.

The Court: Objection sustained.

Mr. Arctander: Exception.

The Court: If it would be material at all, it would be material in your principal case.

(Discussion.)

Mr. Arctander: Ingvald Sandanger's deposition I offer, taken at the same time.

Mr. Arctander here read the first question and answer of Ingvald Sandanger's deposition on file herein, whereupon:

Mr. McCord: I object to that testimony or that deposition for the same reason. He didn't get up there until after the accident. He is testifying as to the conditions that took place subsequently.

The Court: The condition of the oil house?

328 Mr. Arctander: The condition of the oil house three days after the man was hurt.

Mr. McCord: Four days.

Mr. Arctander: Six days after he was hurt. No assumption that there was a continuation of the same conditions.

The Court: You are standing on pretty shaky ground.

Mr. Arctander: I am not afraid of the ground, Your Honor.

Mr. McCord: I object as incompetent, irrelevant and immaterial and not proper redirect or rebuttal testimony, and too remote; I mean testifying as to a state of facts subsequent to the accident.

The Court: That is a part of your case in chief. I think you ought to have put it in your own case, if at all.

Mr. Arctander: I figured that anything that was after the accident should not be in as a part of my case. I could put in the condition the day of the accident and any time before, but that this would be proper in rebuttal of their stating how it was and stating it all the time without confining it to the time of the accident. Every one of their witnesses did that. Peterson—there was none of them that confined it to that time.

The Court: Well, I will sustain the objection.

Mr. Arctander: Exception. Also that there was no difference until the time that he went out fishing, the same condition.

The Court: That was after?

Mr. Arctander: Afterwards.

Mr. McCord: What is that?

The Court: That there was no difference until after he
329 went out fishing.

Mr. Arctander: The same condition, no change in the oil house. Well, then, that is excluded—the whole of the deposition?

The Court: Well, if it is on that line, I sustain the objection to it.

Mr. Arctander: Well, that is all it is. He didn't go there until three days after his brother was hurt. He testifies fully as to the conditions as to what there was and what there was in there.

The Court: Is that all?

Mr. Arctander: That is all.

The Court: Does that conclude the testimony?

Mr. Arctander: Yes.

The Court: Is that all?

Mr. McCord: That is all.

(Court here adjourned until 9.30 o'clock tomorrow morning.)

Proceedings of September 11, 1918.

(The following proceedings were had in the absence of the jury:)

Mr. McCord: I want to make a motion while the jury is out.

Section 2, Article three, of the Constitution of the United States, extends the judicial power of the United States to all cases in
330 admiralty and maritime jurisdiction. Section 8 of Article one of the Constitution of the United States gives Congress power to make all laws necessary and proper to carry into execution the powers vested in the federal government. Sections 24 and 256 of the United States Judicial Code give the federal district courts exclusive judicial cognizance of civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right to a common law remedy where the common law remedy is competent to give it.

Section 18 of the Act of June 26, 1884, 22nd Statutes at Large, 57, provides for a limitation upon the liability of shipowners for debts and liabilities arising through the operation of a ship, and provides

that shipowners shall not be liable for more than the value of the vessel with the current freight pending.

Plaintiff in this case was a seaman, and while engaged upon the vessel of the defendant, in Alaska waters, suffered an injury while in the performance of his duties as a seaman on board the vessel. His injury is maritime. His right to recover is based upon the maritime laws of the United States, as provided by the provisions of the Constitution of the United States and as provided by the provisions of the Acts of Congress, and as defined by the decision of the federal courts of admiralty of the United States and of the Supreme Court of the United States.

The defendant in this case claims the benefit of the above provisions of the constitution and of the acts of Congress and of the laws of the United States, and claims that the amount of the re-
331 covery of the plaintiff in this action must be limited to the amount of recovery fixed by the maritime laws of the United States as fixed by Congress, the constitution and the decision of the admiralty courts of the United States.

The plaintiff had the election to bring his action in the admiralty courts of the United States or in the common law courts of the state of Washington or of the United States. He elected to bring his action in the law courts of the state of Washington, but the amount of his recovery must be limited to the amount that he would have been entitled to recover in accordance with the provisions of the admiralty laws of the United States as fixed, determined and construed by the federal courts, and of the provisions of the Constitution of the United States and of the acts of Congress of the United States, as above enumerated. A denial to this defendant of the right to have the amount of the recovery of the plaintiff limited to the amount of recovery in such cases fixed by the maritime laws of the United States as construed by the federal courts, to a sum equal to plaintiff's wages for the term of his employment, for his medical and hospital expenses and the expense of his cure, aggregating, according to the uncontradicted evidence in this case, not to exceed the sum of $175, is a denial to this defendant of rights guaranteed to it by the above provisions of the Constitution of the United States and of the laws of Congress and of the rights under the law as construed and announced by the admiralty courts of the United States; it oper-
332 ates as a denial to the defendant of a right guaranteed to it under the laws of Congress of the United States, as above set forth; all of which rights and privileges guaranteed to the defendant under the above provisions of the constitution and of the acts of Congress this defendant claims. Any recovery in excess of such amount would be a denial of the rights of this defendant under the above provisions of the constitution, the acts of Congress and under the maritime law, and such recovery would be repugnant to the above provisions of the constitution, the laws of Congress mentioned, and to the maritime laws, as defined by the courts of the United States, and any allowance of a recovery in this case for the plaintiff in excess of the sum of $175 would constitute a deprivation of this defendant of its rights under the said provisions of the constitution and laws of

the United States above mentioned; all of which benefits, rights and privileges this defendant now at this time claims in this court, and asks the court to enforce such provisions in this case.

Wherefore, this defendant moves the court to take this case from the jury and to enter a judgment in favor of the plaintiff and against the defendant, for the sum of $175, and no more, said sum being, according to the uncontradicted testimony, the maximum amount to which the plaintiff is entitled to recover under the maritime laws of the United States, the laws of Congress and the Constitution of the United States, as above enumerated; or, in the alternative, the defendant moves the court to direct the jury to enter a verdict
333 in favor of the plaintiff and against the defendant for the sum of $175, and no more.

I was just putting it in a different form, Your Honor—the motion I made the other day.

The Court: The motion will be denied.

Mr. McCord: Allow an exception, Your Honor.

The Court: Bring in the jury.

(The jury here returned into the court room, whereupon the court read the instructions to the jury, which are on file herein.)

Counsel for the respective parties having addressed the jury, the following proceedings were had:

The Court: The jury will now retire with the bailiff, to deliberate upon your verdict.

(The jury here retired from the court room, whereupon:)

Mr. McCord: Ordinarily, Your Honor, I do not care when the verdict is entered, but I want to be present when this verdict is returned.

The Court: Will you be subject to call?

Mr. McCord: Yes sir.

The Court: All right.

Mr. McCord: I do not want it received until I am here, because I want to be present. I will be in my office.

The Court: We will try to get you if you are at leisure.

Mr. McCord: I will be at leisure.

(The jury returned into the court room at 3.45 o'clock p. m., September 11, 1918, whereupon the jury announced that it had agreed upon a verdict, the verdict was read, and, on the request of
334 counsel for defendant, Mr. McCord, the jury was polled, twelve jurors responding that the verdict returned was the verdict of the jury, but two of the jurors responding that it was not their individual verdict: Whereupon:)

The Court: It seems to be a ten to two verdict.

Mr. Lysons: I am an attorney of record, but I do not know anything about the case. I just happened in, Your Honor.

Mr. McCord: I will ask the court to direct the clerk to withhold the filing of the verdict, and withhold the entry of any judgment,

until I can file and serve a motion for a new trial and a motion for judgment non obstante. I have the motion for judgment non obstante prepared, in anticipation of this decision, Your Honor. If counsel will accept it, I can file it right now.

The Court: Well, the procedure is that the clerk will file the verdict, but will not enter judgment on it until you have an opportunity to file your motion.

Mr. McCord: What is that?

The Court: The procedure is that the clerk will file the verdict that is returned, but he will not enter up judgment on it until you have had an opportunity to make your motion.

Mr. McCord: Very well.

The Court: The verdict may be filed, and the jury will be excused from further consideration of the case.

Mr. McCord: I will serve this motion. (Handing paper to Mr. Lysons.) I will file this. I have already served it.

The Court: The clerk will withhold entering judgment on the verdict, pending this motion.

335 STATE OF WASHINGTON,
County of King, ss:

I, Mitchell Gilliam, one of the Judges of the Superior Court of the State of Washington in and for King County, and sitting in Department No. 4 of said court, and the Judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing statement of facts are matters and proceedings occurring in said cause and the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record therein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions, and rulings thereon; and that Plaintiff's Exhibits "A," "B," "C," "D" and "E," and Defendant's Exhibits "1," "2" and "3," hereto attached, are all the exhibits admitted upon the trial of said cause;

Counsel for plaintiff and defendant being present and concurring.

Done in open court this 19th day of March A. D. 1919.

MITCHELL GILLIAM,
Judge.

336 In the Supreme Court of the State of Washington.

No. 15407.

OLE SANDANGER, Respondent,

v.

CARLISLE PACKING CO., Appellant.

Certificate of Clerk.

I, C. S. Reinhart, clerk of the supreme court of the state of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the above entitled cause as I have been directed by the defendant to certify to the supreme court of the United States.

In Testimony whereof I have hereunto set my hand and affixed the seal of said court at Olympia, this 23d day of December, 1920.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk of the Supreme Court of the State of Washington.

Filed in Supreme Court of Washington Feb. 19, 1921. C. S. Reinhart, Clerk.

15407.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Washington, Greeting:

Being informed that there is now pending before you a suit in which Carlisle Packing Company is appellant, and Ole Sandanger is respondent, No. 15407, which suit was removed into the said Supreme Court by virtue of an appeal from the Superior Court of the State of Washington, for King County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court, and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-eighth day of January, in the year of our Lord one thousand nine hundred and twenty-one.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,029. Supreme Court of the United States, No. 672, October Term, 1920. Carlisle Packing Company vs. Ole Sandanger. Writ of Certiorari.

In the Supreme Court of the State of Washington, October Term, 1920.

No. —.

CARLISLE PACKING COMPANY, a Corporation, Appellant,

vs.

OLE SANDANGER, Respondent.

Stipulation.

It is stipulated that the certified transcript of the record in the above entitled case made by the Clerk of the Supreme Court of the State of Washington and now on file with the Clerk of the Supreme Court of the United States, may be taken and considered as a full re-

turn by the Supreme Court of Washington to the Writ of Certiorari issued by the Supreme Court of the United States in a cause pending therein in which Carlisle Packing Company is Petitioner and Ole Sandanger is Respondent.

KERR & McCORD,
Attorneys for Appellant.
CHADWICK, McMICKEN, RAMSAY & RUPP,
Attorneys for Respondent.

STATE OF WASHINGTON,
County of Thurston, ss:

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct copy of the Stipulation in the above entitled cause as the same was filed on the 12th day of March, 1921 and now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 12th day of March, 1921.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk.

Supreme Court of the State of Washington.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing stipulation is a true copy of the stipulation on file in my office and the return to the writ of certiorari is made in conformity with the provisions thereof.

Witness my hand and the real of said Court hereto affixed, this 17th day of June 1921.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk Supreme Court of the State of Washington.

[Endorsed:] 195-21. 28,029.

[Endorsed:] File No. 28,029. Supreme Court U. S., October Term, 1921. Term No. 195. Carlisle Packing Co., Petitioner, vs. Ole Sandanger. Writ of certiorari and return. Filed June 23, 1921.